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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 622

HONORABLE WALTER J. LA BUY, PETITIONER,

vs.

HOWES LEATHER COMPANY, INC., AND MONTGOMERY WARD & CO., INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 11, 1956

CERTIORARI GRANTED FEBRUARY 27, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

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1-2 In the United States Court of Appeals for the Seventh Circuit

No. 11472, Original

EX PARTE: IN THE MATTER OF HOWES LEATHER COMPANY, INC. AND MONTGOMERY WARD & CO., INCORPORATED, PETITIONERS.

MOTION FOR LEAVE TO FILE PETITION FOR MANDAMUS—Filed May 26, 1955

Petitioners, Howes Leather Company, Inc. and Montgomery Ward & Co., Incorporated, respectfully move this Court:

1. For leave to file the petition submitted herewith for a writ of mandamus.

2. That a rule be entered and issued directing the Honorable Walter J. LaBuy, Judge of the United States District Court for the Northern District of Illinois, to show cause why a writ of mandamus should not issue against him in accordance with the prayer of said petition and why petitioners should not have such other and further relief as may be just and proper.

Dated May 20, 1955.

HOWES LEATHER COMPANY, INC.
By JACK I. LEVY, *its attorney,*
77 West Washington Street,
Chicago, Illinois,
Telephone: ANdover 3-6400.
MONTGOMERY WARD & CO., INCORPORATED
By JOHN F. MCCLURE, *its attorney,*
619 West Chicago Avenue,
Chicago, Illinois,
Telephone: SUperior 7-6200.

of reference. This joint motion of all parties was denied by Judge LaBuy on May 6, 1955.

8. The trial of said action did not commence on May 2, 1955. Pursuant to a notice received from Master Manuel E. Cowen, to whom said action was referred, the parties, by their attorneys, appeared at said master's office on May 18, 1955. At that time, the master indicated his intention of proceeding with the trial of said action. At said meeting, objections to the reference were entered of record by all parties and no opening statements of counsel were made and no evidence was taken. The master requested all parties to consider withdrawal of their objections to the reference and asked that they advise him by noon of Friday, May 20, 1955, as to whether they would withdraw their objections.

9. Your petitioners advised the master during the morning of Friday, May 20, 1955, that they would not withdraw their objections to the reference. Notwithstanding this, the master indicated that the trial of the action will proceed before him.

10. Petitioners, having exhausted, without success, every other means, with the court and the master, to insure trial of this case by the court, now ask this court to issue a writ of mandamus.

WHEREFORE, petitioners pray that a writ of mandamus issue out of this court directed to the said Walter J. LaBuy, Judge of the District Court of the United States for the Northern District of Illinois, commanding him, as such judge, to vacate said order of reference entered by him on February 24, 1955 and to do and perform such other acts and things as may be necessary and proper in the premises.

Dated May 20, 1955.

HOWES LEATHER COMPANY, INC.
By JACK I. LEVY, *its attorney,*
77 West Washington Street,
Chicago, Illinois,
Telephone: ANdover 3-6400.
MONTGOMERY WARD & CO., INCORPORATED
By JOHN F. MCCLURE, *its attorney,*
619 West Chicago Avenue,
Chicago, Illinois,
Telephone: SUperior 7-6200.

6-7 EXHIBIT "A" TO PETITION

In the United States District Court for the Northern District of Illinois Eastern Division

No. 50 C 229

WILLIAM ROHLFING, ET AL, PLAINTIFFS

vs.

CAT'S PAW RUBBER CO., INC., ET AL, DEFENDANTS

ORDER OF REFERENCE TO MASTER

This cause coming on to be heard both upon the trial call of this Court and upon the motion of plaintiffs to reset the case for trial at a later date, and

The Court, being confronted with an extremely congested calendar, and finding that exception conditions exist for this reason, is of the opinion that this case can be most adequately and intelligently presented to the Court for ultimate disposition by reference to a Master.

It is therefore ordered that this cause be and the same is referred to Manuel E. Cowen, Esquire, as Master, to take evidence and to report the same to this Court, together with his findings of fact and conclusions of law.

It is further ordered that the Master shall commence the trial of this cause on Monday, May 2, 1955, at his offices at One North La Salle Street, Chicago, Illinois, and shall thereafter continue with all reasonable diligence.

It is further ordered that the Master may at any time require the parties to supply security for the costs of this reference.

It is further ordered that the Master shall have all of the powers set forth under Rule 53 of the Federal Rules of Civil Procedure.

Enter: —— ——,
Judge.

Dated: February 24, 1955.

8 United States Court of Appeals for the Seventh Circuit

Before

Hon. F. Ryan Duffy, Chief Judge
Hon. Walter C. Lindley, Circuit Judge
Hon. _____

[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AND RULE TO SHOW CAUSE—May 26, 1955.

It is ordered by the Court that the motion for Howes Leather Company, Inc., and Montgomery Ward & Co., Inc., for leave to file a petition for writ of mandamus be, and the same is hereby, allowed and the said petition for writ of mandamus be filed with the Clerk of this Court.

It is further ordered that the respondent show cause, if any, on or before fifteen (15) days from this date, why the said petition for writ of mandamus should not be granted.

9 In the United States Court of Appeals for the Seventh Circuit

No. 11472 Original

HOWES LEATHER COMPANY, INC., and MONTGOMERY WARD & CO., INC., PETITIONERS

vs.

THE HON. WALTER J. LA BUY, United States District Judge, RESPONDENT

[File endorsement omitted]

ANSWER OF RESPONDENT TO PETITION FOR WRIT OF MANDAMUS —Filed June 10, 1955

Comes now the respondent, and for his answer to the petition for a writ of mandamus avers as follows:

I

REFERRAL OF CASE TO MASTER IN CHANCERY

1. On February 23, 1955, the case made the subject matter of this petition (*Rohlfing, et al* vs. *Cat's Paw Rubber*

Co., et al, 50 C 229) as well as a companion case (*Shaffer, et al* vs. *U. S. Rubber Co., et al,* 50 C 844) came before me on motion of the plaintiffs to reset the causes for trial. As is reflected in the transcript of the proceedings before me on that day (Exhibit A in Exhibit Book filed with the Clerk of this Court), I advised the parties that the Court could not immediately hear the case and suggested that consideration be given to the referral of the case to a Master in Chancery, and requested counsel to report to the Court the following morning at 9:30 A. M.

2. On February 24, 1955, the parties appeared in my chambers at 9:30 A.M. to discuss the matter of referring the cases to a Master in Chancery. Counsel for the parties reported they were of the opinion that the two cases should be tried by the Court. I stated that the cases were very complicated and complex, that they would necessarily take considerable time to try; that my calendar was congested with many cases long delayed on account of my engagement in a number of very long trials, the most recent of which was the case of *United States* vs. *du Pont, et al;* that following this long trial I had the longest civil calendar of any judge in the District, and that while I was making rapid progress in reducing the congestion, it would be unfair to the litigants clamoring for trial in other cases, many of which could be tried in a few hours or a few days, were I to again become involved in a protracted trial. I accordingly advised the parties that by reason of the foregoing I would refer the cases to a Master in Chancery for trial, and requested the parties to present an appropriate order. Effective that date, I signed an order proferred by defendants referring this case, as well as the companion case of *Shaffer, et al* vs. *U. S. Rubber Co., et al* to a Master in Chancery.

II

The Reasons Underlying and Supporting the Referral to a Master in Chancery for Trial

3. In my best judgment and discretion, the referral of the two cases made the subject matter of review in
11 this Court met fully and adequately the requirements of Rule 53(b) of the Federal Rules of Civil Procedure, which rule provides as follows:

> "(b) *Reference.* A reference to a Master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; *in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.*"

4. The referral of the two cases here involved was based upon the underlined portion of Rule 53(b) of the Federal Rules of Civil Procedure above quoted for the reasons which I outlined to counsel for the parties on February 24, 1955, and which are hereinafter more particularly set forth:

A.

The Complicated Nature of the Case

5. The case of *Rohlfing, et al.* vs. *Cat's Paw Rubber Co., et al,* 50 229, was filed February 20, 1950, by eighty-seven independent shoe repairmen and on behalf of all others "similarly situated" alleging violations of Sections 1 and 2 of the Sherman Anti-trust Act and violations of Sections 2 and 3 of the Robinson-Patman Act. Named as defendants were five manufacturers of leather goods, six manufacturers of rubbere goods, three manufacturers of shoe polish and related merchandise, eight department or chain stores, and three wholesalers ("finders") of shoe repair materials.

12 6. After a lengthy series of motions directed to pleading issues (see Exhibit B, being a copy of the docket sheet reflecting the motions and their disposition), three eventuated the second amended complaint filed on be-

half of the plaintiffs (see Exhibit C, being the second amended complaint filed by plaintiffs).

7. The second amended complaint (Exhibit C) consists of 104 counts (one for each plaintiff) each of which seeks relief against all of the defendants and charges such defendants with the following alleged violations of the anti-trust laws:[1]

(a) That the defendants entered into a combination and conspiracy in violation of Section 1 of the Sherman Anti-trust Act;

(b) That the defendants contracted, combined and conspired to monopolize and to attempt to monopolize the sale of shoe repair supplies and related items made the subject matter of the seconded amended complaint in violation of Section 2 of the Sherman Anti-trust Act;

(c) That the individual defendants violated Section 2(a) of the Robinson-Patman Act by reason of sales to individual department or chain stores at discriminatory prices;

(d) That the defendants conspired to violate Section 3 of the Robinson-Patman Act through the giving and receiving of illegal rebates.

8. Each of the defendants named in the second amended complaint filed answers responsive to the claims advanced by the plaintiffs in their complaint (see e.g., Answer of Jack Klinger, Exhibit D; Answer of Goldblatt Bros., Inc., Exhibit E; and Answer of Griffin Manufacturing Co., Exhibit F.

9. The plaintiffs claim of violation of Section 1 of the Sherman Anti-trust Act raises complex issues of proof such as establishing a conspiracy to channel sales through preferred buyers, and to fix and maintain non-competitive prices on a given product or products within a defined market and resulting in injury of a measurable amount to each of the party plaintiffs.

10. The plaintiffs' claim of violation of Section 2 of the

[1] By reason of certain dismissals occurring since the filing of the second amended complaint, there are now 87 plaintiffs and six defendants in the *Rohlfing* case.

Sherman Act raises complex issues of proof such as establishing the competitive product and market involved, that plaintiff's purchases were affected by the claimed conspiracy and the import of the conspiracy on each individual plaintiff, which in measurable amount deprived him of the right to compete in the sale of competitive merchandise in specific market areas.

11. The claim of plaintiffs of violation of Section 3 of the Robinson-Patman Act raises issues such as establishing a conspiracy involving the purchase and sale of goods "of like grade, quality and quantity" and that pursuant to such conspiracy some or all of the defendants granted, received or assisted in the granting or receipt of a rebate which was to their knowledge discriminatory as to the individual plaintiff, and from which plaintiff suffered injury.

12. The claims of the plaintiffs with respect to violations of Section 2(a) of the Robinson-Patman Act raise issues such as proof by individual plaintiffs that the price to department or chain store defendants of goods of like grade or quality by the same seller was lower than the price charged the plaintiff with resultant injury to the plaintiff. The defenses, for example, of certain of the defendants among other things raise the issue of "like grade or quality" of merchandise, as well as cost justification of discounts or better prices available to volume buyers (See par. 20, Answer of Jack Klinger, Exhibit D). See also par. 16, Answer of Goldblatt Bros., Inc., Exhibit E, denying it knowingly received illegal or discriminatory discounts from any defendant manufacturer or wholesaler. Defendants also affirmatively rely on the Illinois two year statute of limitations.

13. The difficulties inherent in the many factual issues raised by the pleadings were well described by a memorandum in support of the motion to strike the amended complaint filed on behalf of the defendants, which reads as follows (Exhibit I, pp. 8-9):

"*Complexity of Trial:*

It will be next to impossible for this Court to try this case, as the pleading now stands. The trial will be reminiscent of a "battle royal". There are one

hundred four (104) plaintiffs and ten (10) defendant manufacturers. Considered as a price discrimination case there are one thousand forty (1,040) separate, distinct and unrelated price discrimination claims in Count I. There may possibly be ten (10) in each Count from Count II through Count CV. Each plaintiff must show not only the price at which purchases were made from a manufacturer by a defendant department or chain store in competition with him, he must also show that he bought goods of a like grade and quality from the same seller at a higher price, and that the effect thereof was to "substantially . . . lessen competition . . . or . . . prevent competition between him and such department or chain store. Evidence as to any particular transaction is only admissible as to the defendant who sold the merchandise and is only admissible in favor of the plaintiff who bought it. This evidence is irrelevant as to other plaintiffs and defendants, particularly as to those defendants against whom no price discrimination charges have been made. The trial would be fantastically complicated. Joint trial of these hundreds of unrelated claims would result in interminable delay and impose needless burdens on the Court. If there is to be any semblance of order, the claims of each plaintiff against a particular defendant must be tried separately.

Similar difficulties arise if this is treated as a conspiracy case. No plaintiff can introduce evidence of his damage until a conspiracy is established. If a conspiracy is established, evidence of one plaintiff's damages has no relevancy to the damages of another plaintiff. Proof of damage to all plaintiffs could not be handled in the course of the trial without chaos."

14. The second amended complaint and the answers filed in response to it, as I have briefly indicated above create numerous factual and legal issues relating practically to every major facet of the anti-trust laws. In addition to and beyond those items which I have mentioned briefly above, the Robinson-Patman Act claims will necessitate the examination of books, records, answers to interrogatories and numerous depositions by which the plaintiff seeks to establish violations of that Act. Furthermore, as

needs no emphasis, claimed violations of Section 2(a) of the Robinson-Patman Act necessarily proceed on an individual basis with each plaintiff seeking to establish his individual claim of violation of that Act. This will require a study and analysis of numerous transactions through which the individual plaintiffs will seek to establish their claim of violation of the act, as well as an analysis of the defense of the several defendants, including the cost justification defenses of certain of the defendants.

16 Thus the evidence which the pleadings indicate will be offered by the plaintiffs and the defense evidence to be relied on by the defendants will require an analysis and understanding of extremely detailed lists of accounts, figures, transactions, accounting summaries and similar analyses. As an example of the accounting complexity I have attached as Exhibit G the Answer of Howes Leather Company, Inc. to certain of the plaintiffs' interrogatories, and as Exhibit H the Answer of Armour and Co. to certain interrogatories of the plaintiffs.

The plaintiffs claim statutory treble damages, an injunction, and an "accounting" of the alleged discriminatory price differentials. The relief sought will further entail the detailed analysis of numerous transactions, the examination of many books of accounts, and accounting summaries in order to determine the relief, if any (and the amount of that relief), if the evidence supports plaintiffs' claims.

B

Trial Calendar Congestion

15. The annual report of the Director of the Administrative Office of the United States Courts for 1953 (at p. 91) reflects a 47.7% increase in the total number of civil actions commenced between the years 1951 and 1953 (1951—1995 Civil Cases commenced; 1953—2946 Civil Cases commenced). The statistics for the month of April, 1955, reflect cases pending on my docket in the total number of 871, consisting of 312 Civil Cases, 66 Criminal Cases, and 493 Bankruptcy Cases. Only one other judge assigned to the Northern District of Illinois has a greater number of cases pending, and no other judge has a greater

17 number of criminal cases pending before him for trial and decision.

16. Also as this Court is aware, the number of extremely complicated and time consuming cases on which I sat as trial judge has been extremely burdensome and has resulted in unavoidable delays in the trial of other cases. The following chart reflects some of the major cases which I have tried. As the following chart indicates, I have reflected only actual trial days, which excludes hearings on motions, consideration of briefs, the review of transcripts of testimony and exhibits, and the preparation and rendering of opinions:

Data Relating to Cases Requiring Extended Trial Time

	Trial Days
49 C 1071 —U. S. v. du Pont, et al. (11/18/52–12/21/53)	101
3514 —Emich v. General Motors, et al. (10/20/47–2/26/48)	78
49 CR 285—U. S. v. Tucker (10/4/49–1/22/50)	62
49 CR 570—U. S. v. Mills (11/16/50–12/18/50)	21
50 C 665 —Rutherford v. Whiting Corp. (5/31/51 to 6/20/51)	15
50 C 1750 —Northern Trust v. Essaness (10/13/52–11/3/52)	15
46 C 1399 —U. S. v. Yellow Cab (5/17/48–6/10/48)	13
47 CR 37 —U. S. v. Vrilium Products (3/20/50–4/5/50)	13
46 B 26 —Keeshin Freight Lines (Hearing on Plan) (6/1/49–6/24/49)	12
51 CR 539—U. S. v. Konovsky (5/19/52–6/4/52)	12
18	
46 C 691 —H. F. B. v. Pioneer Publ. (1/20/49–6/13/49)	11
47 CR 620—U. S. v. Muchow (5/17/50–6/2/50)	11

17. The steady increase in the cases filed in the District Court for the Northern District of Illinois, coupled with the abnormally large number of "big" cases assigned to me has resulted in very serious congestion of my trial calendar, even though the statistics for the month of April for the Distrite Court of the Northern District of Illinois reflects that I closed 127 cases, made up of 38 civil cases, 6 criminal cases, and 83 bankruptcy cases.

18. Despite this trial congestion, during the last six years (and exclusive of the two cases here involved) my records reflect that I have referred approximately nine cases to a Master in Chancery, four of which were hearings on limited issues.

C

Estimated Length of Trial of *Rohlfing, et al* vs. *Cat's Paw Rubber Co., et al*, and *Shaffer, et al*, vs. *U. S. Rubber Co., et al*

19. At the time of the hearing on plaintiffs' motion to reset the case on February 23, 1955, there were various estimates made as to the length of the trial of these two cases (Exhibit A). After a consideration of the estimates made by attorneys for the plaintiffs and defendants, it was my belief that the case would take at least two months for actual trial, and approximately a like period of time to review the testimony, exhibits, interrogatories, depositions, and to prepare my decision.

19 20. Counsel representing the plaintiffs advised the Court that he desired a continuance until May, and that he would then be able to commence the presentation of his case. Counsel for all of the defendants, except one, not only announced their readiness for trial, but were most insistent that a trial be held as soon as possible. Counsel for the one defendant Montgomery Ward & Co., advised the Court that he had recently been assigned to the case, but that he would be ready for trial by June, 1955. I advised counsel at that time that my trial calendar was such that cases had been scheduled up to and including the beginning of the summer recess.

D

Conclusion to Part II

21. The sum of the foregoing reasons in my judgment fully and adequately met the traditional standards embodied in Rule 53(b) of the Federal Rules of Civil Procedure for referring the two cases, made the subject matter of the petitions for a writ of mandamus, to a Master in Chancery for trial.

III

PROCEEDINGS SUBSEQUENT TO THE REFERRAL OF THE CASES TO A MASTER IN CHANCERY

22. Subsequent to the order of reference, I am informed that the Master held an informal conference relating to trial procedure such as which of the two cases should be

tried first and the simplification of the factual issues. The plaintiffs immediately subsequent to the entry of the order of reference began the taking of certain depositions in order to have such depositions completed before the date of May 2, 1955, on which date the Master was to begin hearings pursuant to the order of reference. The depositions reflect that counsel for the plaintiffs during this period took approximately sixteen depositions, including depositions of witnesses in Oakland, California, Boston, Massachusetts, and New York, New York.

On April 28, 1955 (two months after the order of reference had been entered), counsel for the parties appeared before me in open court and orally moved to vacate the order of reference previously entered (Exhibit A). The sole ground asserted arose from the filing of a jury demand by a newly joined defendant, as is more fully set forth in paragraphs 23-26 hereof. All parties again advised me that an early and speedy trial was desired. I reserved ruling on the oral motion to vacate the order of reference on the reason advanced by the parties.

23. The plaintiffs on March 29, 1955, filed an amendment to their supplemental complaint by which they sought to add the A. Leviton Company, a corporation, as a party defendant, claiming that this company had succeeded to the business interests of an individual proprietorship which had been made a defendant and was still a defendant in the action. Counsel for the A. Leviton Company then filed an appearance and jury demand under date of April 26, 1955. Plaintiffs subsequent thereto and on April 29, 1955, similarly filed a jury demand with the Clerk of the Court and served this demand on the parties to these actions.

24. The A. Leviton Company was permitted to be added as an additional defendant and counsel for that Corporation on May 2, 1955, then filed a motion to dismiss. Briefs were also filed by the parties with respect to this motion.

25. On May 6, 1955, I filed an opinion and entered an order granting the motion to dismiss of the newly added corporate defendant, A. Leviton Company, the defendant which had made the jury demand as previously explained.

26. As a part of that same opinion and order I also denied the application by the parties to revoke the order of reference, since in my judgment the dismissal of A.

Leviton Company, which was the only defendant that had filed a demand for a jury trial, had likewise disposed of the jury demand of plaintiffs. I was also of the opinion that the jury demand of plaintiffs was improper as not in conformity with Rule 38 of the Federal Rules of Civil Procedure. The same considerations which I have outlined above in part II of this Answer, which had convinced me originally of the propriety of the referral of these cases to a Master in Chancery, were of continuing validity and were the basis upon which I refused to vacate the previously entered order of reference.

27. Except as has been heretofore expressly admitted or explained, respondent denies each and every allegation contained in the petition for a writ of mandamus.

IV

Conclusion

28. For the reasons above stated and relied on, respondent respectfully submits that the order of reference heretofore entered by him was proper and authorized by Rule 53 of the Federal Rules of Civil Procedure and that the petition for a writ of mandamus should be denied and the writ discharged.

Respectfully submitted,

Walter J. La Buy,
Respondent

Dated this day of June, 1955.

24

Exhibit "H" to Answer

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 50 C 229

ROHLFING, ET AL, PLAINTIFFS

vs.

CAT'S PAW RUBBER CO., ET AL, DEFENDANTS

No. 50 C 844

SHAFFER, ET AL, PLAINTIFFS

vs.

UNITED STATES RUBBER CO., ET AL, DEFENDANTS

Transcript of Proceedings of February 23, 1955

Transcript of proceedings had in the hearing of the above-entitled cause, before the Honorable Walter J. LaBuy, one of the judges of said Court, in his courtroom in the United States Courthouse at Chicago, Illinois, on the 23rd day of February, A. D. 1955 at 10:00 a. m.

APPEARANCES

Present:

Mr. Francis Heisler and
Mr. Richard Orlikoff
On behalf of the Plaintiffs;
Mr. Jack I. Levy
On behalf of Defendant Howes Leather Company;
Mr. John C. Butler
On behalf of Defendant Armour and Company
Mr. David L. Dickson
On behalf of Defendant Montgomery Ward & Co.
And others.

25 The CLERK: No. 50 C 229, 50 C 844, Rohlfing et al vs. Cat's Paw et al, motion to reset cause for trial.

Mr. HEISLER: If your Honor please, this is a motion presented on behalf of the plaintiffs, and we are setting forth a number of reasons why we would like to have this matter reset.

The COURT: What date is it set for now?

Mr. HEISLER: It is not set yet, but it is below the line, your Honor, and we have to wait for it, and it may come up for trial, depending on——

The COURT: Is there any objection to the motion?

Mr. LEVY: Yes, if your Honor please.

The COURT: Well, state your reasons. Why aren't you ready for trial?

Mr. HEISLER: One of the reasons, we filed interrogatories with the defendants. Two of the defendants are in default at the present time, and we didn't file interrogatories. We didn't want to come in and ask the Court for a default order, because these defendants said that they are going to file interrogatories. The further thing is, your Honor, that we are at the present time filing our answers to the interrogatories presented to us by the defendants, and that work entailed upon the hiring of some seven or eight extra stenographers, because they wanted to have every single invoice that the plaintiffs have copied, and we did so.

26 We have two more of the plaintiffs' interrogatory answers to be filed, and we are going to do that within the next few days.

Furthermore, at the present—and we set it forth in our motion—some of the defendants are negotiating with us for the purpose of settlement, and we expect that that is going to become concluded within the next few weeks.

The COURT: How many defendants are in the case now?

Mr. HEISLER: In the Rohlfing case there are twelve left.

The COURT: There have been a number of dismissals?

Mr. HEISLER: Yes, sir.

Mr. LEVY: Yes. There were twenty-six.

The COURT: There are twelve remaining defendants?

Mr. LEVY: Yes, your Honor.

The COURT: And are all twelve objecting to the motion for a continuance?

Mr. LEVY: All there are here, I believe.

Mr. DICKSON: I am here on behalf of Montgomery Ward. I have no objection to the motion.

The COURT: How many of the defendants have no objection to the motion for a continuance? I have only heard from one, so far. There are twelve defendants.

Mr. LEVY: Yes, sir.

The COURT: Do the remaining eleven object?

Mr. LEVY: I object, yes, sir.

27 Mr. BUTLER: I object.

The COURT: How many do you represent?

Mr. BUTLER: I represent Armour & Company, if your Honor please. I represent one defendant.

The COURT: Well, how long a continuance are you asking for?

Mr. HEISLER: If your Honor please, we are setting forth in our motion that if the case is continued to about May we should have all of our problems taken care of.

The COURT: How long will this case take to try?

Mr. HEISLER: I would suspect about probably six weeks' time.

The COURT: Six weeks?

Mr. LEVY: If you can make it last six weeks you are a genius, Mr. Heisler.

Mr. HEISLER: Well, the last time I was talking to Mr. Levy and I said, "I think I can set my case before the Court in about two weeks' time", he said, "Well, it will take you two months to do so."

Mr. LEVY: I have looked at your case carefully since then.

Mr. HEISLER: Oh, I see. For four and a half years he didn't look carefully at the case, and now he looks carefully.

Mr. LEVY: I am ready for trial.

The COURT: How long will it take the plaintiff to present their side of the case?

28 Mr. HEISLER: If your Honor please, in the Rohlfing case we have about eighty plaintiffs, and the defendants promised me that they are going to have each one of my plaintiffs—and most of them don't speak English—Italian or other language people—that they are going to cross examine them very carefully. As a matter of fact during the deposition period we spent weeks and weeks be-

cause they had each one of the plaintiffs at least for half a day in their offices for depositions, and I was told that each one of the plaintiffs will be on the witness stand for at least a half day, and therefore I figured six weeks. I can present my case, your Honor—and I am sure Mr. Orlikoff will agree with me—in the Rohlfing case we can present the whole case in less than ten days' time.

The Court: This is going to disrupt my calendar. I have cases set right up to practically the summer vacation period.

Mr. Butler: May I be heard?

The Court: Why not send this to a Master?

Mr. Butler: May I be heard, if your Honor please?

The Court: Yes.

Mr. Butler: I would like to say this: The case was filed on February 20, 1950. That is over five years ago. After some pleadings were attacked, finally a second amended complaint was filed, and the case has been at issue by
29 answer to that second amended complaint since 1952.

Under date of January 12, 1954, which is over 13 months ago, this case was called up for trial, in the same posture it is now. I am reading from the minute order of the Court: "On motion of the plaintiffs, the case placed on the passed case calendar." We appeared at that time and answered ready. Then the case was reinstated on the trial list by minute order of this Court under date of June 15, 1954. That was some eight or nine months ago. And the case was placed on the trial list, and it has taken that time, between then and now, to work up to where Rohlfing is No. 1 below the black line. We have been ready for trial here and we are anxious to go to trial. We have been ready for trial for 15 months, if your Honor please.

The Court: Well, it has taken a long time to get this case at issue. I remember hearing more motions, I think, in this case than any case I have ever sat on in this court.

Mr. Orlikoff: Your Honor, one of the reasons——

Mr. Butler: May I finish?

Mr. Orlinkoff: I just want to address myself to one of the points, sir, and that is that in December of this year this Defendant propounded interrogatories in a companion case which, without exaggeration, has taken all of our energies for two months

Mr. BUTLER: May I answer that?

30 Mr. LEVY: Let's talk about the Rohlfing case. That is the first case.

The COURT: Well, could you agree to have a Master hear this case?

Mr. BUTLER: I think——

The COURT: I don't know when I am going to have a chance to hear it if it is going to take this long, with seventy or eighty plaintiffs,——

Mr. BUTLER: My own estimate is that it will take less than a week.

The COURT: — and some of them through an interpreter, this case could take two months.

Mr. BUTLER: We have taken the deposition of some forty-odd plaintiffs and no interpreter was needed there. That is a fact.

Mr. LEVY: We didn't have any interpreters.

Mr. BUTLER: We had none.

Mr. LEVY: I just want to say two things, your Honor. I want to read what Mr. Heisler said to this Court in August of 1950. He said, "Defendants, as we expected, are trying by means of everlasting and dilatory motions to prevent the trial of this case. We are hopeful that sooner or later even the ingenuity of defendants' counsel may be exhausted, and that there will come a time when they will have to submit to the presentation of our evidence, and if they desire to avoid default, be required by this Court to present

31 their defense."

Now I have been ready for 15 months. He apparently wanted to go to trial in August of 1950.

I represent the Howes Leather Company. The Howes Leather Company manufactures sole leather which is used in the repair trade. When people go into a shoe repairman they don't say "Repair my shoes with Howes' leather" or "Armour's leather". They say, "I want a half-sole" or "a full sole." The success of our department is dependent upon the good will of the shoe repairmen in the United States, and here we are for five years under charges that we have done some very, very drastic, illegal things to the shoe repairmen in the City of Chicago. And for at least a year and three months I have been trying to go to trial in this case. I could, if I were the plaintiffs and wanted to delay trial, always serve some new interrogatories.

The COURT: I will have to check my calendar, Gentlemen; I can't give you word this morning what date I can hear it. In the meantime, consider the question of referring it to a Master. I think it ought to go to a Master—it will take so much of the Court's time.

Mr. DICKSON: While I don't oppose the continuance, I would be prepared to go to trial during the next month, but I cannot go to trial in May. I have just come into this matter to replace an attorney who has left us and
32 who was handling this matter before. I have got to familiarize myself with it, and I have other matters set. June or later is the earliest that I could try this case

The COURT: Well, consider the Court's suggestion, and report to my chambers tomorrow morning at nine-thirty.

33 IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 50 C 229

ROHLFING, ET AL, PLAINTIFFS

vs.

CAT'S PAW RUBBER CO., ET AL, DEFENDANTS

No. 50 C 844

SHAFFER, ET AL, PLAINTIFFS

vs.

UNITED STATES RUBBER CO., ET AL, DEFENDANTS

Transcript of Proceedings of April 28, 1955

Transcript of proceedings had in the hearing of the above-entitled cause, before the Honorable Walter J. LaBuy, one of the judges of said Court, in his courtroom in the United States Courthouse at Chicago, Illinois, on the 28th day of April, A. D. 1955 at 10:00 a. m.

APPEARANCES

Present:

Mr. Francis Heisler and
Mr. Richard Orlikoff

On behalf of the Plaintiffs;
Mr. Jack I. Levy
On behalf of Defendant Howes Leather Company;
Mr. John C. Butler
On behalf of Defendant Armour and Company;
Mr. Wallace R. Sollo
On behalf of Defendant A. Leveton Company;
and others.

34 The CLERK: No. 50 C 844, 229, Shaffer et al vs. U. S. Rubber, et al, motion of all parties to vacate order of February 24th.

The COURT: Motion of all parties; that means that this is by agreement. All parties would include plaintiffs and defendants?

Mr. BUTLER: Yes.

Mr. HEISLER: Yes, plaintiffs agree.

The COURT: What order is this that you want to vacate.

Mr. BUTLER: It is the order of reference in this case, if your Honor please. A new defendant was added on motion of the plaintiffs April 5th, and Wednesday the defendant filed a jury demand, which makes the reference, as it is drawn, both inadequate and removes the condition for the reference, and we are going to have a jury trial in any event, so it is assumed by all of the parties that reference in a non-jury action would be one thing, but a reference in a jury action is another. We are going to have a jury action in any event. All parties thought the order of reference should be vacated.

The COURT: Well, that certainly complicates it. You were all anxious for an early trial, weren't you?

Mr. HEISLER: That's right, your Honor.

Mr. BUTLER: That's right, your Honor.

The COURT: Well, if there is going to be a jury
35 trial, I don't know how you are going to get an early trial. You certainly won't get it before the first of July, vacation period. Our calendar is just jammed.

Who represents the party who has demanded a jury?

Mr. SOLO: I do, your Honor. I am one of the attorneys for A. Leveton Company.

The COURT: What is your name, for the record?

Mr. SOLLO: Sollo—Wallace R. Sollo, from Brown, Fox, Blumberg & Markheim.

I wish to say this to your Honor, that I think that A. Leveton Company has no part in this suit, and we are going to urge it very strongly on account of the covenants not to sue with Public Shoe Service Corporation of which your Honor has already been apprised.

We have just been served with a summons, and we have not filed any pleadings yet, and I think there is a good chance of our going out either on a motion to dismiss, or by motion for summary judgment for the defendant A. Leveton Company.

Mr. ORLIKOFF: The answer of this defendant is due, I believe, Friday. They were served about fifteen days ago.

The COURT: Well, before entering an order, I would suggest a conference of Counsel. Maybe you can adjust this matter among yourselves, as to this one defendant.

Mr. SOLLO: This case was pending five years before
36 they brought in A. Leveton, and after a convenant not to sue. I——

Mr. ORLIKOFF: Well, your Honor, it was pending five years, and we only discovered the subterfuges whereby A. Leveton Company purchased the business from the original defendant six months after the suit was filed, and did business under the same name, and it was the employees of the original defendant that did business. That is why we put them in——

The COURT: Well, in view of the serious consequences of this matter, I think it would be well to try to adjust it somehow.

Mr. ORLIKOFF: I might add, or I might say this, your Honor: The defendant represented by Counsel is the largest wholesaler of shoe findings in the City of Chicago. We regard him and his predecessor who is still in the case—that is the man in Florida that your Honor ordered to come in from Florida the 9th of May—as very definitely principal defendants in this case. Public Shoe Service, at the time we gave the covenant to them, as far as we had any knowledge—and we had sworn depositions to that effect—had no connection with Leveton and Company.

The COURT: You gentlemen are more familiar with the facts than I am, and I suggest that we defer this motion and see if you can adjust it.

Mr. HEISLER: May I call the Court's attention to the

fact that hearing before the Master is set for next
37 Monday, May 2nd, to begin, and today is Thursday.
When we got this notice of the jury demand yesterday, and I called Mr. Butler, and Mr. Butler was kind enough to contact all of the defendants because of the impending hearing before the Master, and as it now stands with a jury demand on file, I don't believe we can go ahead.

The COURT: No, not unless you straighten it out between now and then. Why don't you hold a conference and work it out among yourselves?

Mr. SOLLO: As Counsel knows, Mr. Blumberg will be back on Tuesday, and he is the principal attorney in this case, as far as that defendant is concerned.

The COURT: That you defer the hearing before the Master long enough to hold your conference, is the only suggestion I can make. If you all want trial, why this is certainly a sure way to delay it.

Mr. HEISLER: May I point out that there is a Court order that the Master begin hearings on May 2nd, and I think something ought to be done on that Order so that the master may conduct himself accordingly. Under the present order he must open the hearing on the 2nd.

Mr. LEVY: That's right.

Mr. HEISLER: And I think it would be proper that your Honor enter an order whether or not, cancelling the reference, or postponing the hearing for a few day, and I
38 understand now that Mr. Blumberg, the principal attorney for A. Leveton Company will be back on Tuesday?

Mr. SOLLO: On Tuesday.

Mr. HEISLER: On Tuesday, May 3rd.

The COURT: You will want a couple of days, I presume, won't you?

Mr. SOLLO: I presume he will be swamped the first day, but this will be one of the first matters he will take up.

The COURT: Reset the matter before the Master for about three or four days following that. I am sure there won't be any difficulty about that; that is by agreement.

Mr. HEISLER: Yes, but then your Honor, we have also another request.

The COURT: Tell me what date, and I will have the Clerk notify the Master. What date do you suggest?

Mr. HEISLER: A week.

The COURT: The Clerk suggests an order, so on Order of Court the hearing before the Master is continued from May 2nd. The Clerk wants a draft order.

Mr. HEISLER: All right, we shall have a draft order for a week.

Mr. ORLIKOFF: Make it subsequent to May 9th, because we have the deposition on May 9th.

The COURT: Whatever date you agree upon.

Mr. HEISLER: May I ask the Court's permission to
39 put in to the order that the trial subpoenaes that were issued to the various witnesses continue also to the date in the order?

The COURT: Yes, include that in your order.

Exhibit "B" to Answer

DOCKET ENTRIES

40 CORRECTED PAGE OF ADDRESSES FOR ATTORNEYS—April, 1955

SEND NOTICES

ATTORNEYS FOR PLAINTIFFS:

Richard Orlikoff, 100 W. Monroe.
Francis Heisler, 7 S. Dearborn St.

ATTORNEYS FOR DEFENDANTS:

(For Goldblatt Bros.), Stanford Clinton, Jay A. Pritzker, 134 N. La Sallee St.

(Armour & Co.), Kirkland, Fleming, Green, Martin, and Ellis, 33 N. La Salle St. Ra 6-2929.

Charles Lederer, Philip C. Lederer, Harry Kahn, Leo H. Arnstein, 120 S. La Salle St.

(Howes Leather Co.), Berkson, Lautman, Levinson & Morse, 77 W. Washington St. (2) An 3-6400.

(J. V. Lobell & Hoehn, d/b/a, etc.), Burt A. Crowe, 134 S. La Salle St., Chicago, Ill.

(Montomery Ward & Co.), John A. Barr & David L. Dickson, John F. McClure, 619 W. Chicago Ave. (7) Su 7-6200.

(Griffin Mfg. Co.), Roger W. Barrett & P. W. O'Brien,

Mayer, Meyer, Austrian & Platt 231 S. La Salle St. (4), Jack Klinger, 9625 Emerson Ave., Miami Beach, Florida, Schein, Stavins & Kovitz, I. Leonard Kovitz, 100 W. Monroe St. Suite 1102 AN 3-3745.

41 Simon E. Sobeloff, Eugene M. Feinblatt, 1000 Baltimore Life Building, Baltimore 1, Maryland.

42 WILLIAM ROHLFING, ALEX PIECH, BEN VITALE, CHESTER MAJEWSKI, CARMINE CRISTIANO, WILLIAM ROTHOUPT, MARTIN F. WALZ, FRANK MAGDALIN, THOMAS CECCOLA, WILLIAM ENGLISH, CHARLES HEDIN, JOSEPH MALECKI CLIFFORD O'BEREM, PHILLIPPO BARONELLO, WALTER CWENKALA, PHIL LIBERTY, DOMINICK COLOMINO, WILLIAM CASSANO, ELI BOSNJAK, C. W. BECKWITH, EDWARD PSZOZOLA, ANGELO EMPERO, JOHN FATIGATO, JOE BALSAMO, FRED VITALE, LESLIE ROLANDO, VETO PETRUSO, LOUIS NEWMAN, WILLIAM PAXTON, UDELL SCHUMACHER, K. KIEL, CHARLES GRANATA, BEN MATHEWS, ISSAC CRAPE, VICTOR TREVISANT, GEORGE DOCTORIAN, PAUL TEUBER, GUNNAR JOHANAN, FRANK SHEDLOCK, TONY NOTO, DAVIT MITCHELL, RALPH FERRANTE, EGISTO CARRARINI, VITO COCCUITI, LOUIS CARRARINI, JOSEPH CAVOTO, JOSEPH ADDUCI, THOMAS NIGOHOSIAN, JOSEPH F. SIENKIEWIZ, CHARLES PAGER, JOSEPH ARCABASCIO, JOSEPH WALIK, JOSEPH CERMAK, CHRIST NITCHOFF, ROCCO MANZO, ANTONIO LANDAZZI, PHILIP CATUARA, FRANK BOGAN, JOSEPH PANZELLA, RAYMOND WARD, WILLIAM N. SUTY, FRANK MAGNAVITO, JOHN MARCONI, EUGENE FERAZZI, JOSEPH VARANO, C. DE MATTEO, JOE MUSACCHIO, HARRY SHAYNE, JOHN TESAR, JOEL SHABOZ, OTTO WIEGAND, NICHOLAS SUVLER, WILLIAM STAMOS, GUS THEODORE, JOHN LOCHT, NELS OLSON, TONY ALEO, NICIC PAPPAS, JOSEPH MORINO, ABE GORDON, ANTHONY BEDOE, JOE RAGUSA, ALBERT SECKER, GUS CALIAS, EDWARD GAULKE, BRUSE GWYNN, PAUL BRONEIL, and others similarly situated, PLAINTIFFS,

vs.

CATS PAW RUBBER CO., INC., THE HOLTITE MANUFACTURING CO., A CORP., UNITED STATES RUBBER CO., A CORP., BILTRITE RUBBER CO., A CORP., PANTHER-CANCO RUBBER CO., A CORP., ESSEX RUBBER CO., A CORP., UNITED STATES LEATHER CO., HOWES LEATHER CO., INC., ARMOUR LEATHER CO., a CORP., LEWIS-MCVITTY CO., COVER & CO., INC., GRIF-

FIN-MANUFACTURING CO., A CORP., KROMARK MANUFACTURING CO., A CORP., CAVALIER POLISH CO., A CORP., * MAX J. CROCKER, ALBERT H. LEVIN and LOUISE LEVIN d/b/a SAM'S SHOE SERVICE, SEARS, ROEBUCK & COMPANY, MONTGOMERY WARD AND CO., INC., GOLDBLATT BROS., INC., WIEBOLT STORES, INC., O'CONNOR & GOLDBERG., PUBLIC SHOE SERVICE CORP., DAN GRIPPO, d/b/a GRIPPO & CO., MAX KROCKER, d/b/a SAM THE SHOE DOCTOR, JACK KLINGER, d/b/a A LEVITON CO., RUDOLPH E. KAPLAN, ELI KAPLAN, J. GILBERT KAPLAN, RUBEN CHUPAK, d/b/a REICK- LANFENDORF COMPANY, SOUTH CLARK STREET SHOE REPAIR CO., DEFENDANTS

By order of 3-14-50 Armour and Company to be substituted. James V. Lobell substituted as deft. in lieu of Cavalier Polish Co., JAMES V. LOBELL AND WILLIAM HOEHN, d/b/a CAVALIER COMPANY.

* Added by Supplemental Complaint filed March 14, 1955.
* A. LEVETON COMPANY, a Delaware Corporation.
* Added by supplemental complt filed Mar 5, 1955.

43. ATTORNEYS FOR DEFENDANTS:

(For Goldblatt Bros.) Stanford Clinton, Jay A. Pritzker 134 No. La Salle -DE. 2-0525

(Armour & Co.) Kirkland, Fleming, Green, Martin & Ellis Weymouth, Kirkland, A. L. Hodson, Walter E. Tinsley, Frederick R. Baird & Arthur F. Rackerby 33 No. La Salle St. Rm. 3200 RA. 6-2929

Charles Lederer, Phillip C. Lederer, Harry H. Kahn, Harold C. Adsit Leo H. Arnstein 120 So. La Salle Street CE. 6-3985

(Howes Leather Co., Inc.,) Berkson, Lautman Levinson and Morse, Herbert M. Lautmann, John J. Faissler, Levinson and Morse & Jack I. Levy 77 W. Washington Street (2) AN. 3-6400

ATTORNEYS FOR PLAINTIFFS:

Richard Orlikoff 100 W. Monroe Francis Heisler 7 So. Dearborn Street

Burt A. Crowe 14 So. La Salle St., (Atty for J. V. Lobell & William Hoehn, d/b/a etc.

ATTORNEYS FOR DEFENDANTS:

(Montgomery Ward & Co., Inc.,) John A. Barr & David L. Dickson & John F. McClure 619 W. Chicago Avenue (7) SU. 7-6200

(Griffin Mfg. Co. Inc.,) H. T. Brown, & E. A. Stephan Mayer, Meyer, Austrian & Platt 231 So. La Salle ST. 2-0600 and Newton N. Minow

D. C. Form No. 104A (P. 29)

500 229 DOCKET

TITLE OF CASE

WILLIAM BOHLING, et al
vs.
CAT'S PAW RUBBER CO. et al

ATTORNEYS

For Plaintiff:
Francis Heisler - 1 So. LaSalle
[redacted]

SEE ATTACHED LIST

For Defendant:
(For Goldblatt Bros.)
Stanford Clinton
Jay A. Pritzker
134 N. La Salle St.
De 2-8525

Basis of action: ANTI-TRUST-VIO: CLAYTON & ROBINSON-PATMAN ACTS
Seeks Treble damages and Injunction

Jury trial claimed by A. LEVETOF CO., deft.,
on 4/26/55 Jury Demand by pltfs Apr. 29, 1955

See Previous Page for Other Attorneys

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
2-20-50	F. H. Dep	15 00					
APR 20 1950	MARCH REPORT		15 00				
6-13	F.H. - Contempt	12 00					
7-31	Def. - Atty's Fees		12 00				

ABSTRACT OF COSTS		RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT	

(44)

50C229

DATE	PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
2-20-50	Filed complaint and (25) copies (13)Exs)(JS-5)	15 00		
2-20-50	Issued summons and (2) copies with copies of complaint &			
2-24-50	Mld. Marshal. (2)			
" " "	Ord. upon the Clerk of the Court to issue summons & mail them to the Marshals of the jurisdictions to serve upon defts-DRAFT-LaBuy,J. (2)			
	Mld. notc. to attys., 3-1-50.			
2-[illegible]-50	Issued summons & 2(2) cops with cops of complt mld. to U.S.Mar., Boston,Mass. to serve on Biltrite Rubber Co., and Panther Panco Rubber Co. a corp.			
" " "	Issued summons and (3) cops with cops of compl.mld. to U.S.Mar.,Baltimore,Md., for serv. on Cat's Paw Rubber Co., Inc., The Meltite Mfg. Co., Cavalier Polish Co.			
2-27-50	Issued summons & copy with copy of compl.mld. to U.S.Mar., Trenton,N.J.,for serv. on Essex Rubber Co.,			
" " "	Issued summons & Cop. with cop of compl mldg. to U.S.Mar., Brooklyn,N.Y., for serv. on Knomark Mfg. Co., a corp.			
" " "	Issued summons & (2) cops with cops of compl mld to U.S. Mar.,Phila,Pa., for serv. on Lees-McVitty Co., and Cover Mfg. Co.			
" " "	Issued summons & cop with cop of compl mld to U.S.Mar., N.Y.City, N.Y.,for serv. on Griffin Mfg.Co.			
3-1-50	Filed Memorandum. (4) L			
3-8-50	Filed summons retd. served as to Griffin Mfg. Corp. 1 serv. $2.12			
" " "	Filed summons retd. served as to Knomark Mfg. Co. 1 serv. $2.12 JB			
3-9-50	Filed summons ret'd. served as to Biltrite Rubber Co. and the Panther-Panco Rubber Co. 2 serv. $4.60			
" " "	Filed appearance of attys. for Goldblatt Bros. Inc. P			
3-13-50	Filed summons retd. served as to Max Krocker, Sears Roebuck & Co., U.S. Rubber Co., U.S. Leather Co., Howes Leather Co., Inc., Public Service Corp., Reick-Lanfendorf Co., Goldblatt Bros., Inc., O'Conner & Goldberg, Dan Grippo, Montgomery Ward & Co., Wiebolt Stores, Inc., K. Kaplan Sons & Co., Jack Klinger and Armour Leather Co. 15 serv. $31.56 JB			
3-14-50	Fld. Appearance of Public Shoe Service Corp. and their attys. (1)			
" " "	Fld. Appearance of United States Rubber Co. and their attys. (1)			
" " "	Fld. Appearance of Sears, Roebuck & Co., K. Kaplan Sons Co. and Rudplph E. Kaplan, Eli Kaplan, J. Gilbert Kaplan, Ruben Chupak, d/b/a Reick-Langendorf Co. and their attys. L			
" " "	Fld. Appearance of Armour & Co. and their attys.			
" " "	Fld. Appearance of United States Leather Co. and their Attys.			
" " "	Fld. 7 Stip. (1)(1)(1)(1)(1)(1)(1) L			
" " "	Fld. Notice of Motion. (1)			
" " "	By stip. to substitute Armour and Co. as deft. in lieu of Armour Leather Co. and extend time of pleading until Apr. 20-1950 - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 3-15-50 L			
" " "	By stip. to extend time to plead, etc. to Apr. 14, 1950 and that certain N. Y. Attys. be admitted to practice etc.-DRAFT-LaBuy,J. (2)			
	Mld. notice to attys. 3-15-50 L			
" " "	Ord. on stip. tm. of defts. Cat's. Paw Rubber Co. The Meltite Mfg. Co. Bilt Rite Rubber Co. Panther Panco Rub. Co. & Essex Rubber Co. & South Clark St. Shoe Repair Ins. to ansr. plead to complt. extd. to Apr. 20, 1950 - DRAFT - LaBuy, J.			
	Mld. notice to attys. 3-15-50 L			

(45)

D. C. 113A 50 C 229 (P.31)

16—43786-1

DATE	PLEADINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
3-14-50	On stip. extend time for deft. United States Rubber Co. to plead to Apr. 20, 1950 - DRAFT. - LaBuy, J. (1)			
	Mld. notice to attys. 3-15-50 L			
" " "	Ord. on stip. time to answer, move or otherwise plead extd. to Apr. 20, 1950 - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 3-15-50 L			
" " "	By stip. extd. time of certain defts. to plead to Apr. 20 1950- DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 3-15-50 L			
3-15-50	Filed Stip. (1)			
" " "	Order on stip. time of deft. Knomark Mfg. Co. Inc. to answer or move to complt. extd. to April 20, 1950-LaBuy, J.			
	Mld. notice to attys. 3-15-50 P			
3-16-50	Filed Appearance of Grippo & Co. and attys.			
3-20-50	Filed appearance of add'l. attorneys for Sears Roebuck Co., K. Kaplan Sons and Co., Rudolph E. Kaplan, Eli Kaplan, J. Gilbert Kaplan, Ruben Chupak, d/b/a Reick-Langendorf Co.			
" " "	Filed appearance of O'Connor and Goldberg deft. (1)			
" " "	Filed special appearance of Howes Leather Co. Inc. (1)			
" " "	Filed two Stipulations. (1) (1)			
" " "	Filed Notice. (3)			
" " "	Filed Motion to quash service. (2)			
" " "	Filed affidavit of Howes Leather Co. (2)			
" " "	Filed affidavit of C. Stanley Howell. (1)			
" " "	Motion of Howes Leather Co. Inc. to quash service argued and sustained and said service is quashed-DRAFT-LaBuy, J. (1)			
" " "	Order on stip. time of deft. Goldblatt Bros. Inc. to plead or answer to complt. extd. to April 20, 1950-DRAFT-LaBuy, J. (1)			
" " "	Leave to amend complt. by substituting Howes Leather Co. Inc. a Delaware Corp. for Howes Leather Co., Inc., a Mass. Corp., wherever the same appears. Summons to issue against Howes Leather Co. Inc. a Delaware Corp.-LaBuy, J.			
" " "	Order on stip. time of deft. Jack Klinger to plead or answer to complt. extd. to April 20, 1950-LaBuy, J.			
	Mld. notice to attys. 3-21-50 P			
3-21-50	Fld. Appearance of the United States Leather Co. and its Non-resident attorneys. (1) L			
" " "	Fld. Stip. (2) L			
" " "	Enter order on stip. with respect to taking of deposition etc. - DRAFT - LaBuy, J.			
	Mld. notice to attys. 3-22-50 L			
3-22-50	Filed Appearance of Panther-Panco Rubber Co. and attys.			
" " "	Filed Appearance of Lees & McVitty, Inc. and attys.			
" " "	Filed summons retd. served as to Essex Rubber Co. 1 serv. $2.12			
" " "	Filed Motion to Strike and Dismiss by O'Connor & Goldberg			
" " "	Filed Motion to Dismiss of Lees and McVitty, Inc. & Ex. (22) jb			
3-23-50	Filed Notice of Filing Motion and Proof of Serv. (4) jb			
3-24-50	Fld. Summons ret's. served as to Cats Paw Rubber Co. Holtite Mfg. Co. and Cavalier Polish Co. 3 Serv. $6.48 L			
" " "	Fld. appearance of Wiebolt Stores, Inc. and their attys.			
" " "	Fld. Stip., Notice and Stip. (1) (4) (1) L			

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DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
3-24-50	Order on stip. extend time to answer to the complt. to Apr. 20, 1950 - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 3-27-50 L			
" " "	Extend time for brief to Mar. 31, 1950 on points 1 and 2 extend indefinitely brief as to points 3 and 4 of motion to dismiss of Leas and McVitty, Inc. -DRAFT-LaBuy, J. (2)			
	Mld. notice to attys. 3-27-50 L			
" " "	Order on stip. time of deft. Grippo and Co. to answer or plead to complt. extd. to Apr. 20, 1950 - LaBuy, J.			
	Mld. notice to attys. 3-27-50 L			
3-27-50	Filed summons ret'd. served as to Leas & McVitty, Inc. and Cover & Co. Inc. 2 serv. $4.24			
" " "	Filed appearance of Jack Klinger d/b/a A. Leveton & Co. F			
3-28-50	Filed appearance of deft. Montgomery Ward & Co. (1)			
" " "	Filed answer of deft. Montgomery Ward & Co.			
" " "	Filed Stip. (1)			
" " "	By stip. time within which deft. Cover & Co. shall answer or otherwise move extended to 4-20-50-DRAFT-LaBuy, J.			
	Mld. notice to attys. 3-29-50 P			
3-31-50	Filed Appearance of Howes Leather Co.,Inc., and Herbert M.Lautmann, John J.Faissler, & Jack I.Levy, as attys.			
" " "	Filed Notc. & Proof; and Brief of Leas & McVitty,Inc.(3) (15)r			
4-3-50	Fld. Appearance of Griffin Mfg. Co. & there Attys. L			
4-6-50	Filed summons retd. served as to Howes Leather Co. 1 serv. $2.24			
" " "	Filed Stip. (1)			
" " "	By stip. time of pltf. to file brief in opposition to mo. of deft. Leas & McVitty, Inc. to dism. extd. to Apr.28, 1950 - LaBuy, J.			
	Mld. notice to attys. 4-7-50 Jb			
4-13-50	Filed Stip. (2)			
" " "	By stip. time of certain named defts. to plead extd. to May 20, 1950 - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 4-14-50 Jb			
4-17-50	Order nunc pro tunc April 10, 1950 that taking of depositions be cont. generally - DRAFT - Sullivan, J. (1)			
	Mld. notice to attys. 4-19-50 L			
4-24-50	Fld. Stip. (1)L			
" " "	Order on stip. time of deft. O'Connor & Goldberg to file brief in support of motion to strike and dismiss extd. until further order of Court - DRAFT - LaBuy, J. (1)L			
	Mld. notice to attys. 4-26-50 L			
4-28-50	Fld. Stip. (1) L			
" " "	Enter order on stip. to dismiss Leas & McVitty, Inc. as a party deft. - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 5-1-50 L			
5-4-50	Fld. appearance of Essex Rubber Co. and their attys. L			
5-18-50	Filed Notice. (3)			
" " "	Filed three Joint and several motions of certain defts. (5) (3) (3)			
" " "	Order on motions of certain defts. to fix dates for filing briefs and affidavits in support of and opposing their joint and several motions filed this date, and to extend time within which defts. may file all other motions addressed to the complt.-LaBuy, J. DRAFT. (30)			

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DATE	FILINGS—PROCEEDINGS	CLERK'S FEES				ANSWER RECEIVED BACK FROM RECORDER
		PLAINTIFF		DEFENDANT		
5-19-50	Filed Stip. (1)					
" " "	Order on stip. time for deft. Cover and Co. to answer or plead to complt. extd. to June 9, 1950-DRAFT-LaBuy, J.(1) Mld. notice to attys. 5-24-50 P					
6-7-50	Filed Stipulation (1)					
6-6-50	Entered agreed order extending time of certain Defendants to file briefs and affs, etc. to July 20, 1950 - Time of Plaintiffs to file briefs & affs. in opposition thereto extended to Aug. 21, 1950 and leave to Defendants to file reply within 16 days thereafter etc -DRAFT- LA BUY,J.(2)					
6-7-50	Order on stipulation Defendants Cat's Paw Rubber Co., et al to take Plaintiffs' depositions without notice etc. Draft - LA BUY,J. (1)					
6-8-50	Filed Stipulation (1)					
6-8-50	By stipulation time extended for Defendant, Cover & Co. to answer or otherwise move to and including June 29, 1950 - DRAFT- LA BUY,J. (1) Mailed notice to attorneys 6-14-50 K.					
6-19-50	Filed Notice (3)					
6-19-50	Filed Motion and Affidavit (2)					
6-19-50	Filed Special Appearance (1)					
6-19-50	Leave to Burt A. Crowe to file special appearance on behalf of James V. Lobell- Statements heard in support of motion of Lobell to quash service of summons on Defendant Cavalier Polish Co. Inc. and without objections said motion is sustained- Service of Summons quashed - Cavalier Polish Co. Inc. dismissed as party Defendant - LA BUY,J.					
6-19-50	Filed Motion (1)					
6-19-50	Order substituting James V. Lobell et al as defendant in lieu of Cavalier Polish Co., a corp. Clerk to issue summons - Heisler, Askow & Stevens substituted as attys for Plaintiffs etc - DRAFT- LA BUY,J. (1) Mailed notice to attorneys 6-21-50 K.					
6-7-50	Fld. Stip. re: extd. time for which the Deft. Cover & Co. may file answer. (1) L					
6-7-50	By stip. extd. time for the Deft. Cover & Co. to ans. or otherwise move to and including July 25, 1950 - LaBuy, J. Mld. notice to attys. 6-28-50 L					
7-3-50	Filed Appearance of Dan Grippo, d/b/a Grippo & Co. & attys.					
6-30-50	Fld. Stip. (1)					
" " "	By stip. extd. time within which to answer or otherwise plead to Sept. 10, 1950 - Sullivan, J.					
7-11-50	Ent. ord. on stip. by Cat's Paw Rubber Co. Inc., and other named defts. and the pltfs. for an extension of time for the defts. and pltfs. to file their respective briefs and affidavits - DRAFT - Sullivan, J. (2) Mld. notice to attys. 7-14-50 L					
7-17-50	Filed Summons returned served as to James V. Lobell, and William Hoehn. Marshal's Fee $4.48.r					
7-21-50	Filed Appearance of James V.Lobell & William Hoehn,etc., Defts.					
7-21-50	Filed Stipulation. (1)					
7-21-50	Enter Order by stip., tm. of deft. Cavalier Co., et al, to ans. complt., extd. to & incl., Sept. 10, 1950-DRAFT Campbell,J.(1)					

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DATE	FILINGS—PROCEEDINGS	CLERK'S FEES
	Mailed notice to attorneys, 7-24-50.	r
7-25-50	Fld. Stip. (1)	L
" " "	Ent. ord. extd. time for deft. Cover & Co. to answer to Sept. 10, 1950 - DRAFT - Campbell, J. (1)	
	Mld. notice to attys. 7-27-50	L
7-28-50	Filed Affidavit of Robert H.Klurman re service of brf.(1)	
07-28-50	Filed Affidavits submitted by Cat's Paw Rubber Co.,Inc., et al, in support of their motions heretofore filed.(17)	r
8-7-50	Fld. Notice. ( )	
" " "	Leave to Lederer, Livingston, Kahn, & Adair, to withdraw appearance as attys. for Defts. K. Kaplan Sons Co. et al and leave to Harry Z. and Bernard Feibel to substitute appearance as attys. for said defts. - LaBuy, J.	
	Mld. notice to attys. 8-8-50	
" " "	Fld. Substitution of Attorneys. (1)	L
8-28-50	Fld. Proof of Service of Briefs. (2)	L
" " "	Fld. Proof of service of Briefs. (1)	L
9-6-50	Filed Stip. (1)	
" " "	Defts'. time to file motion to quash and dismiss is extd. to Sept. 10, 1950 - DRAFT. (1)	
	Mld. notice to attys. 9-7-50	jb
9-7-50	Filed Stip. (1)	
" " "	Defts. tm. to ans. or otherwise plead is extd. to Sept. 29, 1950 - DRAFT - Igoe, J. (1)	
	Mailed notice to attys., 9-11-50.	
9-8-50	Filed Notice & Motion of James V.Lobell and William Hoehn d/b/a Cavalier Co., to Quash Service of Summons & Dismiss.(3)	r
9-8-50	Fld. Brief in Support of Motion to Quash Service of Summons and to Dismiss Action. (4)	L
9-15-50	Fld. Reply Brief of Certain Defts. (8)	
9-15-50	Fld. Notice. (1)	
" " "	Order on motion of certain defts. cause cont. to Oct. 6, 1950 for argts. on pendg. motions - DRAFT - LaBuy,J.(1)	
	Mld. notice to attys. 9-18-50	L
9-22-50	Fld. Deft's. Reply Brief. (4)	I
9-29-50	Fld. Stipulation. (2)	
" "	Ord. by stip., extending tm for deft. Cover & Co. to ans. or otherwise move with respect to complt to and incl. Oct. 30, 1950 - LaBuy,J.	
	Mld. notc. to attys., 10-2-50.	r
10-6-50	Arguments on defts. motions to dismiss hrd. and advisement - LaBuy, J.	
	Mld. notice to attys. 10-9-50.	P
10-13-50	Filed Stipulation. (1)	
" "	Ord. by stip., complt. fld. against deft. Cover & Co. dism'd. with prej.-DRAFT-La Buy,J. (1)	
	Mld. notc. to attys., 10-16-50.	r
6-28-51	Filed Memorandum of the Court (18)	B
6-28-51	Motion to enter orders in conformance with Court's Memorandum Opinion of June 18, 1951 taken under advisement and disposition continued to June 28, 1951 - LaBuy, J.	

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DATE	PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
6-26-51	Filed Notice (3)			
"	Enter order quashing service of summons against defendants Lobell and Hoehn, etc., and dismissing said defendants as parties - DRAFT - LaBuy, J..			
6-28-51	Motion to require plaintiffs to file amended complaint, etc., denied - Motion to dismiss complaint with respect to class action sustained with leave to plaintiffs to amplead additional parties - Motions to drop certain plaintiffs and defendants as misjoined parties and to sever claims sustained, etc., Leave to Julius L. Echeles to withdraw as one of attorneys for plaintiffs and leave to Harold L. Katz to file appearance as co-counsel for plaintiffs- DRAFT - LaBuy, J.			
	Mailed Notice to Attys. 7-2-51 (2 orders) B			
7-27-51	Filed Stip. (1)			
" " "	On stip. pltfs. time to file an amended complt. is extd. to Sept. 15, 1951 and defts. time to answer or otherwise plead thereto is extd. to Oct. 15, 1951-Igoe, J.			
	Mld. notice to attys. 8-2-51. P			
8-24-51	Filed Notice (2)			
8-24-51	Filed Motion for order quashing Interrogatories (4 and Interrogatories attached) K			
8-24-51	Plaintiff's time to file amended complaint extended to Oct. 1, 1951 -Defendant's motion for an order quashing interrogatories continued to Oct. 1, 1951 before Judge LaBuy - CAMPBELL,J.			
	Mailed notice to attys 8-28-51 K.			
8-29-51	Filed Interrogatories (4)			
8-29-51	Filed Interrogatories & Affidavit of service (6)			
8-29-51	Filed Interrogatories (5) K			
9-28-51	Filed Amended Complaint (52)			
9-28-51	Filed Proof of service (2)			
10-1-51	Order Defendant's motion for order quashing interrogatories withdrawn- By agreement interrogatories taken as served on this date -Leave to Defendants to file objections to same within 10 days and leave to defendants to answer interrogatories not objected to within 15 days -LA BUY,J.			
	Mailed notice to attys 10-3-51 K.			
10-3-51	Enter order allowing Meisler & Katz to substitute appearance as attys for Plaintiff -DRAFT- LA BUY,J. (1)			
	Mailed notice to attys 10-3-51 K			
10-10-51	Filed Stipulation to extend time to ans interrogatories (1)			
10-10-51	Order on stipulation time in which defendants may file objections to or answer interrogatories extended to and including Oct. 26, 1951 - LA BUY,J.			
10-10-51	Filed Stipulation extending time to answer Amended Compt			
10-10-51	Order on stipulation time in which defendants may answer or otherwise plead to Amended Complaint extended to and including Nov.10, 1951 - LA BUY,J.			
	Mailed notice to attys 10-12-51 K.			
10-24-51	Filed Stipulation (2)			
10-24-51	Order on stipulation time in which defendants may file objections to or answer interrogatories heretofore served on defendants be extended to and including Nov.10,1951- LA BUY,J. K.			

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DATE	PLEADINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
	Mailed notice to attys 10-25-51 K.			
10-29-51	Filed Notice. (2)			
" "	Filed Stip. of Discontinuance. (2)			
" "	Order by stip. to dismiss U. S. Leather Co-DRAFT-LaBuy, J. (1)			
	Mld. notice to attys. 10-30-51. P			
11-5-51	Filed Substitution of attorneys and notice. (3)			
" "	Leave to withdraw appearance of certain attorneys and substitute other attorneys for deft. South Clark St. Shoe Repair Co-DRAFT-LaBuy, J. (1)			
	Mld. notice to attys. 11-13-51. P			
11-9-51	Filed Stipulation (1)			
11-9-51	Order to extend time of Defendants to object to or answer interrogatories until to and including November 24, 1951 as per stipulation - DRAFT- LA BUY, J. (1)			
11-9-51	Filed Notice (3)			
11-9-51	Filed Notice (3)			
11-9-51	Leave to Defendants Biltrite Rubber Co. et al to file mo to dismiss amended complaint and supp. brief instanter-Leave to plaintiffs to file answer brief on or before Nov. 30, 1951 and leave to defendants to file reply within 15 days thereafter and hearing on said motion continued to Dec. 18, 1951 at 10:00 A. M. etc -DRAFT- LA BUY, J. (2)			
	Mailed notice to attys 11-13-51 K.			
11-9-51	Filed Memorandum in support of motion to strike amended Complaint (10) K.			
11-20-51	Filed Stipulation (1)			
11-20-51	Order by stipulation time certain defendants to object or answer interrogatories continued to December 6, 1951- LaBUY, J. DRAFT (1)			
	Mailed notice to attys 11-27-51 P			
11-30-51	Filed Counter-motion of the pltfs. in opposition to the defts. motion to strike amended complt. and brief of pltfs. in opposition to the defts. memorandum in support of their motion to strike amended complt. (9) P			
12-3-51	Filed Stipulation as to written interrogatories etc (5)			
12-3-51	Order extending time for defendants to answer interrogatories as modified by stipulation to Dec. 10, 1951- DRAFT- LA BUY, J.			
	Mailed notice to attys 12-[illegible]-51 K.			
12-6-51	Filed Stipulation (2)			
12-6-51	Filed Answer of the Defendants Panther-Pance Rubber Co. Biltrite Rubber Co. et al (1)			
12-6-51	Order time to file defendants' answers to interrogatories as modified by stip. dated Nov. 30, 1951 extended to and including Jan. 10, 1952; time in which defendants may file reply brief in support of motion to strike amended complaint extended to and including Dec. 28, 1951; hearing on defts' motion to strike amended complaint be reset to Jan. 25, 1952- DRAFT- LA BUY, J. (2)			
	Mailed notice to attys 12-10-51 K.			
12-14-51	Filed Notice (2) K.			
12-12-51	Filed Ans. of Wiebeldt Stereo. Inc. to Interrogs. Served by Pltfs. Aug. 17, 1951. (3)			
12-20-51	Filed Receipt of Communication and Brief of Pltfs. by Defts. and Affdvt. of Service. (2)			
12-26-51	Filed Notice (1) K.			

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DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REMITTED ON EMOLUMENT RETURNS
12-28-51	Filed Reply Brief in support of Motion to Strike Amended Comblaint. (5). P			
1-8-52	Filed Notice. (1)			
" " "	Filed Answer of Armour & Co. to Interrogs. (1)			
" " "	Filed Answer of United States Rubber Co. to Interrogs. (2)			
" " "	Filed Proof of Service of Ans. of United States Rubber. (1)			
" " "	Filed Answer of Holtite Mfg. Co. to Interrogs. (2)P			
1-9-52	Filed Answer of Goldblatt Bros., Inc. to Interrogs. (2)			
" " "	Filed Answer of Griffin Mfg. Co. to Interrogs. (2)			
" " "	Filed Answer of Sears, Roebuck & Co. to Interrogs. (2)			
1-10-52	Filed Answer of Montgomery Ward & Co. to Interrogs. (2)			
1-10-52	Filed answer of Public Shoe Service Corp. to Interrogs. (4)			
" " "	Filed Answer of Howes Leather Co., Inc. to pltfs. Written Interrogs. (3)P			
1-14-52	Filed Answer of Reick Langendorf Co. to Interrogs. of pltfs. (unsigned copy filed) (3)			
" " "	Filed Answer of K. Kaplan Sons & Co. to Interrogs. of pltfs. (unsigned copy filed) (10) P			
1-15-52	Fld. Ans. to Interrogs. by Deft. Jack Klinger, d/b/a Business as a Leveton Co. (3)r			
1-24-52	Filed Stipulation (1)			
1-24-52	Filed Answer of O'Connor & Goldberg to Interrog. (3)			
1-25-52	Arguments on Defts' motion to dismiss amended complaint heard and advisement- Leave to pltffs to file amendments to complaint as amended on or before Feb.10, 1952- Leave to defts to file additional memoranda thereto within 10 days thereafter and leave to plaintiffs to file reply within 10 days thereafter- LA BUY,J.			
	Mailed notice to attys 1-28-52 K.			
1-30-52	Filed Stipulation (1)			
1-30-52	Order on stipulation time of defendant to file amendment to answer to interrogatories extended to Jan.30, 1952- LA BUY,J.			
	Mailed notice to attys 1-31-52 K.			
2-5-52	Filed Answer to Interrogatories (K. Kaplan) (10) K.			
2-5-52	Filed Answer to Interrogatories of Reick-Langendorf Co. (3) K.			
2-5-52	Filed Amendment to Answer to Interrogatories K. Kaplan Sons and Co. (2) K.			
2-8-52	Filed Stipulation (1)			
2-8-52	Order on stipulation time of plaintiffs to file amendment to complaint etc extended 30 days from Feb. 10, 1952 and time of parties to file briefs with respect thereto likewise extended - LA BUY,J.			
2-8-52	Defendant's motion to dismiss Count I of amended Complt. sustained and said Count I is dismissed - LA BUY,J.			
	Mailed notice to attys 2-12-52. K.			
3-4-52	Fld. Stip. (1)			
" " "	Plf's given 30 ds. from Mar. 11, 1952, in which to fl. their amendment to the Amd.Complt, on their further Amd.Complt. or other plea. Defts. shall have 10 ds. from such plea to fl. their addn. to memoranda heretofore fld. Plf's shall have 10 ds. to fl. their ans. to defts' addition to Memoranda -LaBuy,J.			
	Mld. notc. to attys., 3-5-52. r			

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DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
4-10-52	Filed Second Amended Complaint (76) K			
4-14-52	Filed Proof Of Service Of Second Amended Complaint (2) d			
4-17-52	Filed Stip. (1)			
" " "	Order fixing time for defts. to move or otherwise plead to 2nd amended complt. at May 14, 1952-LaBuy, J.			
	Mld. notice to attys. 4-21-52. P			
5-14-52	Motion to strike portions of Second Amended Complaint, etc. cont. to May 20, 1952 - La Buy, J.			
	Mld. notice to attys. 5-15-52			
5-14-52	Filed Notice (3)			
5-14-52	Filed Motion to strike etc (3)			
5-14-52	Filed Memorandum in support of Defts Motion to strike portions of the second Amended Complaint (5) K.			
5-20-52	Filed Motion To Strike portions of 2nd Amended Complaint taken under advisement-Lv to pltfs to file answer brief on or before June 1, 1952 and lv to defts to file reply brief within 10 days thereafter Draft - LaBuy, J			
	Mld ntc to attys 5-21-52 d			
5-26-52	Filed Proof of service (1) K.			
5-26-52	Filed Memorandum of Plaintiffs (5) K.			
6-4-52	Filed Reply Brief in support of Defendant's motion to strike portions of the second amended complaint (3) k			
7-8-52	Filed Memorandum of Judge LaBuy (1)			
7-8-52	Defendant's motion tostrike portions of Second Amended Complaint overruled- LA BUY, J.			
	Mailed notice to attys 7-14-52 K.			
7-16-52	Fld. Stip. (1)			
" " "	On stip., ord. extd. tm. defts to ans Second Amd. Complt up to & incl Sept. 12, 1952 -Perry, J. (DRAFT-2)			
	Mld. notc. to attys., 7-18-52. r			
9-10-52	Filed notice			
9-10-52	Filed Answer of deft Wieboldt Stores, Inc to the Second Amended Complaint (19) sb			
9-11-52	Filed Answer of Biltrite Rubber Co To Plaintiff's Second Amended Complaint (6)			
9-11-52	Filed Answer Of Jack Klinger d.b/a/A. Levitor Co to Plaintiff's Second Amended Complaint (7)			
9-11-52	Filed Answer Of Defendant Knomark Manufacturing Co Inc. (27)			
9-11-52	Filed Answer Of Armour & Company, a Corp. To Plaintiffs' Second Amended Complaint (9)			
9-11-52	Filed Answer Of United States Rubber Company To Plaintiffs' Second Amended Complaint (7)			
9-11-52	Filed Answer Of Dan Grippo d/b/a Grippo and Company to Second Amended Complaint (6) d			
9-11-52	Filed Answer Of Essex Rubber Company To Plaintiff's Second Amended Complaint (6) d			
9-11-52	Filed Answer Of South Clark Street Shoe Repair Inc To Second Amended Complaint (7) d			
9-12-52	Filed Separate Answer Of The Holtite Mfg Co to Second Amended Complaint (9) d			

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DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
9-12-52.	Filed Separate Answer To Second Amended Complaint			
	Cat's Paw Rubber Co. Inc (12)			
	K. Kaplan Sons & Co. (9)			
	Reick-Langendorf (8) d			
	Sears, Roebuck and Co. (14)			
	O'Connor & Goldberg a Corp (7)			
	Howes Leather Company ,Inc. (2)			
	Goldblatt Bros. Inc., (6)			
	Public Shoe Service Corp. (8)			
	Griffen Manufacturing Co. (7)			
	Montgomer, Ward & Co. and Notice and Proof Of Service (4)			
9-12-52	Filed Notice (4)			
9-12-52	Order depositions commence Nov. 1, 1952 Draft LaBuy J			
	Mld ntc to attys 9-15-52 d			
9-22-52	Filed Interrogatories propounded by the Defts etc.(2) K.			
9-23-52	Fld. Stip. (1)			
" " "	Ord on stip. lv. to amd. ans. of deft. Public Shoe Service Corp. on face-DRAFT-LaBuy,J.			
	Mld. notc. to attys., 9-25-52. r			
10-2-52	Filed Notice (2).			
10-2-52	Filed Objections to Interrogatoriespropounded by Pltff(1)k			
10-6-52	Plaintiff's objections to defendant's interrogatories taken under advisement - Leave to Plaintiff to file supp brief within 10 days - Leave to defts to file answer brief within 10 days thereafter and leave to plaintiffs to file reply within 5 days thereafter- LA BUY,J.			
	Mailed notice to attys 10-7-52 K.			
10-16-52	Filed Memorandum in support of Plaintiff's objections to interrogatories propounded to Plaintiffs by defts (5) K.			
10-23-52	Filed Notice and Proof of Service of Interrogs. (2)			
10-27-52	Filed Deft's Brief in opposition to Plaintiff's Objections to Interrogatories served by Deft. Sept. 22, 1952 (6) K			
10-30-52	Filed notice and motion (3) (4)			
10-30-52	Filed stip (1)			
10-30-52	On mo defts commencement of taking of depositions contd until further ord of Court. Defts mo to extd tm to fl objs or answers to interrogs taken under advisement-LaBuy			
	Notc mld to attys 10-31-52 sb			
10-30-52	Ord on stip tm of pltfs to fl reply brf in re objns to interrogs extd to Nov 5, 1952-LaBuy			
	Notc mld to attys 10-31-52 sb			
11-5-52	Filed Notice Re Memorandum etc d			
11-6-52	Filed Memorandum of pltf, in reply to defts. brief in opposition to pltfs. objections to interrogatories. (3) P			
12-10-52	Filed Memorandum			
"	Enter order pursuant to memo overruling pltfs objs to certain interrogs & giving leave to pltfs to answer within 30 days. - LaBuy,J.			
	Mailed notice to attys 12-11-52 H			
1-8-53	Filed Stipulation (1)			
"	Order on stip time of pltfs to answer interrogatories extended to 2-10-53. - LaBuy, J.			
	Mailed notice to attys 1-9-53 H.			

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16—42736-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
1-20-53	Filed Withdrawal as atty. (Harold A. Katz) (1)			
"	Filed additional appearance of atty., Richard Orlikoff(1)H			
2-10-53	Pltf's several answers to interrogatories propounded to them by certain of the defts. and dated 9-22-52. GB			
2-10-53	Filed Statement of attys for pltfs. (1)			
"	Filed Proof of Service (1)			
4-3-53	Filed Notice (2)			
"	Filed Motion of Pltfs (1)			
"	Enter order on motion of pltfs for order upon defts to answer interrogatories entered and contd to 4-7-53.-Perry,J.			
	Mailed notice to attys 4-7-53 H			
4-7-53	Filed Plaintiff's Several Answers To Interrogatories Propounded To Them By Certain Of The Defendants And Dated Sept. 22, 1952 (14)			
"	Arguments heard and motion of pltfs for order on defts to Answer interrogatories contd to Apr 14, 1953 -LaBuy, J			
	Mld ntc to attys 4-9-53 d			
4-14-53	Pltffs' several answers to interrogatories propounded to them by certain of the defts & dated September 22, 1952.(14)			
" " "	Enter order with respect to pltffs answer to interrogatories. DRAFT. LaBuy, J. (1)			
	Notices mld to attys. 4-17-53 tb			
4-21-53	Filed Motion Of Plaintiffs For Order Upon Defts To Answer interrogatories (1)			
"	Mo of plaintiffs for order on defts to answer interrogs argued and taken under advisement - LaBuy, J			
	Mld ntc to attys 4-23-53 d			
4-24-53	Pltffs motion for order on Defts to answer or plead to interrogs of Oct. 1952 sustained and said answers or pleadings to be filed on or before June 1, 1953. Lv to Defts to take depositions in accordance with agreement of counsel-DRAFT- LaBuy, J.			
	Mld ntc to attys 4-29-53 L			
"	Filed memorandum 4-24-53			
4-28-53	Filed Notice of Motion to Dismiss Complaint as to Certain Plaintiffs (2) L			
"	Order dismissing this action with prejudice as to the following Pltffs: Alex Piech, Chester Majewski, Frank Magdalin, Joseph Panzella, C DeMatteo, Harry Shayne, Charles Hedin, Gunnar Johanan, Chris Nitchoff, Nicholas Suvler, Joe Raguso, Joseph Cohen, William Hensel and Edward Lucht, and that the time within which the Pltff Louis Newman shall answer said interrogs be and the same is hereby extented until further order of this Court - DRAFT - LaBuy, J.			
	Mld ntc to attys 4-28-53 L			
5-7-53	Filed stipulation (1)			
" " "	On stip. time or deft Sears Roebuck & Co. to ans. or plead to interrogs extended to June 22,1953. LaBuy-J			
	Notice mld to attys. 5-8-53 tb			
5-14-53	Filed stipulation (1)			
" " "	Ent. order to extend time to plead to interrogs to June 22, 1953 as per stip. LaBuy-J			
	Mld notice to attys. 5-14-53 tb			

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50 C 229

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED ON EMOLUMENT RETURNS
5-21-53	Filed stipulation (1)			
" " "	Order time of deft Howes Leather Company, Inc., to ans. or object to pltffs' interrogatories extded to and including June 22, 1953. LaBuy-J Notice mld to attys. 5-22-53 tb			
5-27-53	Filed Notice of Motion. (2)			
" " "	Filed Motion for declaratory judgment of dismissal as deft. herein by Dan Grippo, sued herein as doing business as Grippo & Co. (2)			
5-27-53	Motion of deft. Grippo Co. for declaratory judgment for dismissal as a deft. taken under advisement, leave to file supporting brief in 15 days, leave to file answer brief within 15 days thereafter and leave to file reply within 10 days thereafter-LaBuy, J.			
5-27-53	Filed Stip. (1)			
" " "	On stip. to extend time of defts. Cat's Paw Rubber Co., Inc. and Holtite Mfg. Co. to answer or otherwise plead to interrogatories of plif. to and including June 25, 1953-LaBuy, J. Mld. notice to attys. 6-1-53.			
5-27-53	Filed Stip. (1)			
" " "	Enter order time of defts. K. Kaplan Sons & Co., et al. to answer pltfs. interrogs. extd. to June 22, 1953-LaBuy, J. Mld. notice to attys. 6-1-53. P			
5-28-53	Filed Stip. (1)			
" " "	Enter order on stip. time of defts. American Biltrite Rubber and Essex Rubber Co. to answer or object to pltf's. interrogs. extd. from June 1, 1953 to June 22, 1953-LaBuy, J. Mld. notice to attys. 6-1-53. P			
5-28-53	Filed Notice. (2)			
" " "	Filed Objections to certain interrogs. propounded by pltfs. to deft. South Clark St. Shoe Repair, Inc. (1)			
" " "	Filed Answer to certain interrogs. propounded to deft. South Clark Street Shoe Repair, Inc. (5) P			
6-1-53	Filed Answer of O'Connor & Goldberg to Interrogatories of pltff. (6)			
" " "	Filed Answers and Objections to pltffs' interrogatories by deft. Griffin Mfg. Co., Inc., (8)			
" " "	Filed Waiver of Notice and Stipulation (1)			
" " "	Objections of South Clark Street Shoe Repair Inc. to pltffs' interrogatories taken under advisement - supp brf waived - lv to pltffs to file brief in 10 days & lv to deft to file reply within 5 days thereafter. On stip briefs to be filed as above with respect to objections of deft Griffin Mfg. Co. LaBuy-J			
" " "	Filed Stipulation (1)			
" " "	On stip. time of Montgomery Ward & Co. to answer or plead to interrogs of Oct. 1952 extended to June 22,1953. LaBuy-J			
" " "	Filed Notice by deft Wieboldt Stores (1)			
" " "	Filed Answer of deft Wieboldt Stores to pltffs interrogs. served October 21,1952 (5)			
" " "	Filed Objections of deft Wieboldt Stores to certain of pltffs' interrogs. served Oct. 21, 1952 (2)			
" " "	Objections to Interrogatories taken under advisement. Lv to file supp. brf in 10 days - lv to file ans brf within			

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10—43736-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
	10 days thereafter & lv to file reply within 5 days thereafter. LaBuy-J			
6-1-53	Filed Notice (1)			
" " "	Filed Notice, affidavit, and Motion of deft Armour and Co. (6)			
" " "	Filed Motion of deft Armour and Co. for partial summary judgment and exhibits (3)(33)			
" " "	Motion for Partial Summary Judgment on Robinson-Patman Act claims taken under adv. - lv to file supp. brf in 5 days - lv to pltff to file ans. to ans. & ans. brief within 10 days thereafter & lv to file reply within 5 days thereafter. LaBuy-J			
" " "	Answers and Objections of deft. Armour and Company to pltffs' interrogatories			
" " "	Objections to certain interrogs taken under advisement-supp. brf waived - lv to pltff to file brief in 10 days & lv to deft Armour & Co. to file reply within 10 days thereafter. LaBuy-J			
	Notices mld to attys. 6-2-53 tb			
6-2-53	Filed Stipulation (1)			
" " "	On stip extend time for defendant Public Shoe Service Corporation to answer or otherwise plead to plaintiffs' interrogatories to June 22, 1953 - LaBuy,J.			
6-5-53	Mld ntcs			
6-2-53	Fld Memorandum in support of motion for partial summary judgment by Armour & Co., deft (8)			
" " "	Fld Answers and objections to plaintiffs ' Interrog(6)			
6-11-53	Filed Notice, Motion of deft, Griffin Mfg. Co., for partial summary judgment and affidavit (6)			
"-10-53	Filed Brief in sup. of Motion by Grippo & Co. for declaratory judgment dismissing Gripon and Company as a deft. herein. (3)			
" 11-53	Filed brief of deft Wieboldt Stores, Inc. in sup. of its objections to certain of pltffs' interrogatories served August 21, 1953.			
" " "	Filed stipulation (1)			
" " "	Enter order upon stipulation time in which pltff may file memorandum ent. to June 17, 1953 and time for defts Armour & Company and Griffin Mfg. to reply ext'ded to June 26, 1953. LaBuy-J			
	Notices mld to attys. 6-12-53 tb			
6-16-53	Filed Notice of taking of Depositions (3) H			
6-17-53	Filed Memo. of pltfs in ans. to objections of defts to interrogs. filed by pltfs. (12)			
6-18-53	Filed Notice (3)			
"	Filed Answer of Amer. Biltrite Rubber Co. to Interrogs. of pltfs, and exhibit (6)			
"	Filed Answer of Essex Rubber Co. to Interrogs. of pltfs(5)			
"	Filed Stipulation (1)			
"	On Stip. extend time to answer or object to interrogatories from 6-22-53 to 7-1-53. DRAFT - LaBuy, J.			
	Mailed notice to attys 6-22-53			
6-19-53	Filed Appearance of additional co-counsel for Montgomery Ward & Co. Inc.			
"	Filed Notice and Proof of Service			
"	Filed Ans and objections to Pltfs' Interrogs by Jack Klinger(4)			

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CAUSE NO. 50 C 229 RE: (P 1/13)

DATE	PROCEEDINGS					
6-19-53	Filed Notice	(2)				
"	Filed Motion of U.S.Rubber Co. for Summary Judgment & Affdvts	(10)				
"	Filed Proof of Serv. & Notice of Motion	(2)				
"	All defts who have filed motions for summary judg. shall file briefs in support thereof on or before July 9, 1953; pltfs shall file answering briefs on or before July 24, 1953; and defts shall file reply briefs on or before Aug. 3, 1953 - LaBuy,J.					
	Mailed notice to attys 6-22-53	H				
6-19-53	Filed Stipulation					
"	Extend time in which to answer or plead to pltf's interroge to 7-1-53 as per stip. DRAFT - LaBuy,J.					
	Mailed notice to attys 6-24-53	H				
6-22-53	Filed Notice of Motion.	(3)				
" " "	Filed Motion and Affidavits and Exhibits.					
6-23-53	Filed Notice.	(1)				
" " "	Filed Answer and Objections of United States Rubber Co. to Interrogs. Propounded by pltfs.	(12) and Exs.				
6-23-53	Clerk's File Copy of Transcript of Proceedings had on April 7, 1953 filed by Official Reporter.	(10) P				
6-24-53	Filed Notice & Motion	(3)				
" " "	Filed Motion of Deft Howes Leather Co. for sum.judgmt.etc.& affi. in sup. of mo.	(4)				
" " "	Mo. of deft Howes Leather Co. for sum.judgmt as to pt of claims of pltffs & for other relief pursuant to rule 56 taken under advisemt & brfs to be fld within the tm fixed by previous ord with respect to like motions. LaBuy-J					
" 25 "	Filed stip.	(1)				
" " "	Filed stip.	(1)				
" " "	Lv to fl instan. answers & objectns of certain defts to interrogatories of pltfs-tm of Griffin Mfg. Co. to fl brf with respect to objs to interrogs ext'd to July 3, 1953. LaBuy-J					
	Notice mld to attys. 6-26-53	tb				
" " "	Filed Answers & objections to pltf's interrogs.	(14)				
" " "	Filed " " " to pltf's "	(9)				
" 25 "	Filed Proof of Service	(2) tb				
6-26-53	Filed Memorandum Of Armour & Co. In Support Of Its Objections To Certain Of Plaintiffs' Interrogatories And In Reply To Plaintiffs' Memorandum	(11) d				
6-29-53	Filed Notice	(1)				
"	By agr obj's of K.Kaplan Sonsh Co., et al to interrogs to stand as brf in supp thereof- Lv to pltf to fl answering brf within 15 days and lv to deft fl reply within 15 days thereafter - LaBuy,J					
	Mld ntc to attys 6-29-53	d				
6-29-53	Filed Reply Brief Of Wiebolt Stores, Inc. In Support Of Its Objections To Certain Interrogatories Served Aug 21, 1952	(8) d				
6-30-53	Filed Notice	(2)				
6-30-53	Filed The Answers And Objections Of Cat's Paw Rubber Co., Inc. To Plaintiff's Interrogatories	(8)				
6-30-53	Filed Stipulation	(1)				
"	By stipulation extend time for deft's Cat's Paw Rubber Co. Inc and Holtite Manufacturing Co to answer pltff's interrogatories to and including June 30, 1953 - LaBuy, J					
	Mld Ntc to attys 7-3-53	d				
7-1-53	Filed Answers And Objections Of Sears Roebuck and Co.To Plaintiffs Interrogatories	(3) d				

CAUSE NO. 50 C 229 RE:

DATE	PROCEEDINGS				
7-1-53	Filed Objections Of Howes Leather Co.Inc.To Certain Written Interrogatories Served By Plaintiffs Oct 22 1952 (3) d				
6-30-53	Filed The Answers And Objections Of Holtite Manufacturing Co. to Plaintiffs' Interrogatories (6)				
7-1-53	Filed Answers Of Howes Leather Company, Inc To Certain Written Interrogatories Served By Pltffs Oct 22, 1952 & Proof Of Service (6) d				
7-2-53	Filed Brief Of Howes Leather Company Inc. In Support Of Its Objections To Written Interrogatories Served by Pltffs' Oct 22, 1952 (6)				
"	Filed Brief Of Howes Leather Company, Inc. In Support Of Motion For Partial Summary Judgment (8) d				
7-3-53	Filed stip. between pltff & deft. Montgomery Ward & Co. (1)				
7-8-53	Filed Notice re filing Memo in support of Motion of deft. U.S. Rubber Co.				
7-9-53	Filed Notice				
"	Filed Brief of deft. Montgomery Ward & Co. in support of its motion for summary judgment (9)				
7-15-53	Filed Notice of Filing and Proof of Service. (2) P				
7-16-53	Filed Notice. (2)				
" " "	Filed Motion of Wiebolds Stores Inc. for Summary Judgment and Exhibits. (35)				
" " "	Order deft. Wiebolds Stores, Inc. file its brief in support of its motion for summary judgment on or before 7-23-53 and pltf's. file their reply brief in answer thereto on or before 9-30-53 and said deft. shall file its reply brief on or before 10-15-53-DRAFT-Hoffman, J. (1) Mld. notice to attys. 7-16-53. P				
7-15-53	Order by stip. that the depositions of pltfs. by defts. shall commence on a date to be agreed on by counsel between 8-4-53 and Sept. 9. 1953-DRAFT-Hoffman, J. (1) Mld. notice to attys. 7-22-53.				
7-15-53	Filed Stipulation as to Depositions. (3)				
7-20-53	Filed Stip. 8 (1)				
" " "	Order time for deft. Howe's Leather Co., Inc. to file reply brief extd. to August 14, 1953 by stip.-DRAFT- Barnes, J. (1) Mld. notice to attys. 7-22-53. P				
7-24-53	Filed Proof of Service in re 2 Memorandums of Pltf. (2)				
7-29-53	Filed Answer of Goldblatt Bros, Inc. to Pltfs' interrogatories (5)				
7-31-53	On stip. ord. time for certain defts. to file reply brief extended to Sept. 1, 1953 Barnes J. DRAFT (1) Mld. notices to Attys. on 8-3-53				
8-3-53	Filed notice (3) ld				
8-4-53	Filed stip. (1)				
" " "	On stip ord tm deft Montgomery Ward & Co. fl reply brf extd to August 11, 1953. Perry J Note mld to attys. 8-5-53 tb				
8-11-53	Filed Notice, (3)				
" " "	Filed Reply Brief of deft. Montgomery Ward & Co., Inc. in support of its motion for summary judgment. (5) P				
8-17-53	Filed Notice and Motion For Order Dismissing the Bill. Paul Hessin as Cripps Co., Inc A Dft. In Above Cause With Prejudice (1) (1)				
"	Motion by Dan Cripps as Cripps and Company for order upon petition for summary decree dismissing Cripps & Co. as a dft. with prejudice entd and ecptd by agreement to Aug 31, 1953 - Perry, J Mld ltr to Cripps 8-18-53				

CIVIL DOCKET

50 C 229

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	[redacted]
8-31-53	Order deft Dan Grippo's motion for summary judgment granted and said deft ordered dismissed with prejudice and without costs Draft - Knoch J			
	Mld ntc to attys 9/1/53 d			
9-1-53	Fld Reply brf of defts U.S.Rubber Co.Griffin Mfg.Co., Armour & Co., Howes Leather Co.Inc. to Pltfs' memo in ans. to defts' several motions for partial sum. judgmt. & appendix (3)(6) tb			
9-21-53	Filed Request For Admission Of Facts by Howes Leather Co. Inc.,)2) d			
10-5-53	Filed stip. (1)			
" " "	Ord. upon stip. time in which pltffs may fl brf in ans. to mo. of deft Wieboldt's for sum. judgmt be extended to Oct. 10, 1953 & tm for reply brf extended to Oct. 25, 1953. LaBuy-J			
	Mld notices 10-6-53 tb			
10-12-53	Filed Pltfs' Brief in Ans.to Brief of deft.Wieboldt Stores, Inc. (7)			
"	Filed Proof of Service H			
10-20-53	Filed Request for Admission of Facts. (2) P			
10-23-53	Filed Deft.Armour & Company Second Request For Admissions Under Rule 36 (7)			
10-23-53	Filed Deft. Howes Leather Co., Inc., Second Request For Admissions Under Rule 36 (7) d			
10-26-53	Filed Reply Brief of Deft Wieboldt Stores, Inc., in sup. of its motion for summary judgment. (12)tb			
10-30-53	Ord. Extension of time to pltffs to Nov. 30 to ans. admissions 3, 5 & 7 of second request for admissions by Armour & Co. Stip. LaBuy-J			
" " "	Filed stip. (1)			
" " "	Filed stip. (1)			
" " "	Ord. extension of time to pltfs to Nov. 30 to ans. admissions 3,5, 7 of Second Request for Admissions by Howes Leather Co. LaBuy-J			
" " "	Filed stip. (1)			
" " "	Ord. on stip. cs dis. without costs as to pltffs Paul Teuber, John Marconi and Nick Pappas. LaBuy-J			
	Mld notices 11-2-53 tb			

DATE	FILINGS—PROCEEDINGS
11-3-53	Filed Notice (2)
11-3-53	On motion of I. Leonard Kovitz/to withdraw as atty for deft Jack Klinger d/b/a/A. Leveton & Co Draft- LaBuy, J Mld ntce 11-4-53
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to Sam Klein
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to M. S. Klein.
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to William F. Smith
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to Bert Bastianoni
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to Harry L. Post
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to Eli E. Kaplan
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to R. E. Kaplan
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to George G. Kerr.
11-5-53	Filed Subpoena and Subpoena Duces Tecum ret'd. served as to Don Lauletta
11-5-53	Filed Subpoena ret'd. and Subpoena Duces Tecum ret'd. served on A. M. Abrams
11-5-53	Filed Subpoena ret'd. and Subpoena Duces Tecum ret'd. served on Al Abrams P
11-27-53	Ent.ord. mo. of deft Jack Klinger to file pro se appearance. Perry-J DRAFT (1) Mld notices 11-30-53
11-27-53	Filed Notice (2)
11-27-53	Filed appearance of Jack Klinger,d/b/a A. Leveton Co. as deft, pro se th
11-30-53	Filed Notice (2)
11-30-53	Filed Motion (1)
" "	On pltffs' motion time of witnesses subpoened for trial to appear and testify contd generally - LaBuy, J
" "	Filed Stipulation (1)
" "	Order/to extend time to and including Nov 30, 1953 for pltffs' to respond to 2nd Request For Admissions of Armour and Co LaBuy, J d

CAUSE No. 50 C 229 FILE: (P.47)

DATE	PROCEEDINGS
11-30-53	Filed Stipulation (1)
" " "	Order on stip. to extend time to and oncluding Nov 30, 1953 for pltffs' to respond to 2nd Request For Admissions Of Howes Leather Co. -LaBuy, J
	Mld ntcs 12-1-53 d
" " "	Filed Response Of Plaintiffs To Second Request For Admissions Under Rule 36 of Howes Leather Company and Armour & Co mpany (2) d
12-2-53	Order that all persons heretofore served with subpoenas to give testimony at the trial of this cause shall appear before the Court in answer to such subpoena at a date to be set for the trial of this cause - DRAFT - Igoe, J.
	Mailed notices 12-4-53 H
12-21-53	Filed Stipulation To Dismiss (1)
" " "	Order motion to dismiss on stipulation as to deft U.S.Rubber Co with prejudice and no costs -Draft-LaBuy, J
	Mld ntcs 12-22-53 d
1-12-54	On motion of pltf. cause placed on passed cs. cal-Perry, J.
	Mld. notices 1-13-54. P
1-29-54	Filed Notice. (1)
" " "	Filed Motion of deft. Sears Roebuck & Co. for partial summary judgment. (3) and Exhibits
" " "	Enter order motion of deft. Sears Roebuck & Co. for partial summary judgment taken under advisement, leave to deft. to file supp. brf. in 20 days, leave to pltf. to fl. counter-affs. and ans. brf. within 20 days thereafter and lv. to deft. to reply within 10 days thereafter-LaBuy, J.
	Mld. notices 2-1-54. P
1-29-54	Filed Memorandum of Judge La Buy (9)
" " "	Motions of defts. for summary judgment overruled. Defts. objections to interroge. sustd. in part and overruled in part and leave to said defts. to ans. interroge. within 30 days-LaBuy, J.
	Mld. notices 2-3-54. P
2-3-54	Filed Notice of Motion (2)
2-3-54	Enter order allowing substitution of atty for defts Rudolph E. Kaplan et al ats in each case LaBuy, J (see file 50 C 844)
2-3-54	Filed Substitution of Attys (1) d
	Mld ntcs 2-4-54 d
2-15-54	Filed Notice of Motion and Motion of deft. O'Connor and Goldberg for Summary Judgment, (5) and Exhibits.
2-15-54	Motion of deft. O'Connor and Goldberg for summary judgment taken

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CAUSE NO. _____ RE: 50 C 229 (P.48)

DATE	PROCEEDINGS					
2-15-54	under advisement and leave to deft. to file supp. brief within 20 days and leave to pltfs. to file ans. brief within 30 days thereafter and leave to deft. to file reply within 10 days thereafter-LaBuy. J. Mld. notices 2-16-54.		P			
2-18-54	Filed Notice re brief	(2)	H			
2-19-54	Enter order on stip extdg time within which deft Howes Leather Co shall answer pltff's interrogatories to 3/30/54 Draft -LaBuy. J					
	Mld ntcs 2-23-54		d			
2-24-54	Filed Stipulation					
"	Enter order extend time for Griffin Mfg. Co. Inc. to answer pltfs' interrogatories to March 30.1954 as per stip.- LaBuy. J.					
"	Mailed notices 2-25-54		H			
2-26-54	Mailed C.C.of Memo entered 1-29-54 by J.LaBuy to Atty.Gen.Washington,D.C.					
2-26-54	Filed Stipulation	(1)				
2-26-54	On stip. time of deft Montgomery Ward & Co. to answer or plead to pltffs' interrogs extd to Mar. 15, 1954 - LaBuy. J					
	Mld ntcs3-1-54		d			
3-2-54	Filed Stip.	(1)				
" " "	Enter order to extend time within which deft. Wieboldt Stores, Inc. may answer interrogatories to and including March 31, 1954 by stipulation-LaBuy, J.					
	Mld notices 3-3-54.		P			
3-2-54	Filed Supplemental Answer of Armour and Co. to pltfs. interrogs.	(30)				
3-5-54	Filed proof of service & notice of filing Brief					
"	Filed Stipulation					
"	Enter order on stip extending time to answer interrogs to Avril 30, 1954 - LaBuy, J.					
	Mld Ntcs 3-8-54		H			
3-10-54	Filed Stipulation					
"	On stip time of deft Public Shoe Service to answer interrogs extd to Apr. 12, 1954 - LaBuy, J.					
	Mld ntcs 3-11-54		H			
3-16-54	Filed notice	(3)	hh			
3-18-54	Filed Stipulation	(1)				
3-18-54	On stip.time of Montgomery Ward & Co.to answer or plead to interrogs extended to Apr 15. 1954 - LaBuy, J					
	Mld ntcs 3-19-54		d			
3-25-54	Filed further Answer of deft Wieboldt Stores, Inc. to pltfs' Interrogatories served 10-21-52	(5)	H			
3-29-54	Filed Stipulation	(3)	d			

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CIVIL DOCKET 50 C 229 (P. 49)

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	ASSOCIATE REPORTER'S EMOLUMENT RETURNED
29-54	Order to extend time to answer pltffs' interrogatories on stipulation to April 15, 1954 - LaBuy, J			
	Mld ntcs 3-30-54 d			
-31-54	Filed Notice			
"	Motion for reconsideration and reargument of motion of Wisboldt Stores, Inc. for summary judgment entered and contd generally by agreement - LaBuy, J.			
	Mld ntcs 3-31-54 H			
-31-54	Filed Proof of Service and Notice of Filing (2) hh			
-31-54	Filed Notice and Further Answers of Howes Leather Company, Inc., to Interrogatories which were propounded to it under Rule 33. (5) hh			
-1-54	Mo deft. Wisboldt Stores Inc. for reconsideration of Court's opinion of Jan 29, 1954 with respect to mo. for summ. judg. allowed and lv to said deft to fl brief in 20 days and lv to pltf to ans. same within 10 days thereafter - LaBuy, J			
	Mld ntcs 4-1-54 d			
-1-54	Filed Notice and Motion Of Griffin Mfg. Co To Extend Time To Answer Pltffs' Interrogatories (1) (1)			
-1-54	On mo. of Griffin Mfg. Co extd time to answer Pltffs' Interrogs To April 30, 1954 - LaBuy, J			
	Mld ntcs 4-6-54 d			
-6-54	Filed Notice and Proof of Service			
"	Pltf's motion to strike certain of the answers to pltf's interrogatories filed by defts Armour & Co. and Howes Leather Co. taken under advisement - LaBuy, J.			
	Mld ntcs 4-26-54 H			
4-27-54	Filed Pltf's motion to strike certain answers of defts (4)			
4-28-54	Filed Memorandum of Judge LaBuy (1)			
"	Pltf's motion to strike answer of defts Howes Leather Co. Inc. and Armour & Co. to certain interrogatories sustained and said defts directed to make responsive answer thereto within 15 days - LaBuy, J.			
	Mld ntcs 4-29-54 H			
4-28-54	Filed Further Answer of Griffin Mfg. Co. to Pltfs' Interrogs (9)			
4-29-54	Filed Notice			
"	Order extending until May 20, 1954 time in which certain defts may answer pltf's interrogatories - LaBuy, J.			
	Mld ntcs 4-30-54 H			

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50 C 229

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT EMOLUMENT RETURNS
4-30-54	Filed Notice (3)			
" " "	Enter order extend time of deft. Wieboldt Stores to file brief on motion to dismiss an additional 10 days-LaBuy, J.			
	Mld. notices 5-3-54.			
4-30-54	Filed Notice (1)			
" " "	Enter order to extend time for Cat's Paw Rubber Co. and Holtite Mfg. Co. to answer interrogatories of pltfs. to and including May 30, 1954-LaBuy, J.			
	Mld. notices 5-3-54.			
5-6-54	Filed Notice of Motion (1)			
5-6-54	Order extension of time to June 15, 1954 within which deft Howes Leather Company shall answer pltffs' interrogatories Draft - LaBuy, J			
	Mld ntcs 5-7-54 d			
5-12-54	Filed Notice			
"	Order extension of time to June 14,1954 for deft Armour & Company to answer interrogatories - LaBuy, J.			
	Mld ntcs 5-12-54 H			
5-14-54	Mo. deft Public Shoe Service to Extd tm to ans. interrogs contd to May 17, 1954, LaBuy-J			
5-17-54	Ent. ord. on mo. deft Public Shoe Service extd tm to ans. interrogs to May 24, 1954. LaBuy-J			
	Mld notices 5-18-54 tb			
5-18-54	Filed Notice of Motion and Proof of Service (2)			
" " "	Filed Motion (5)			
" " "	Leave to respondent to answer motion for order of contempt in 10 days and cause continued to June 2, 1954 for hearing. -La Buy, J.,			
	Mailed notices 5-19-54 hh			
5-20-54	Filed Notice of Motion To Dismiss (2)			
5-20-54	Filed Motion To Dismiss Defts.Biltrite Rubber Co.,Essex Rubber Co.,Panther-Panco Rubber Co.,Knomark Mfg. Co., and O'Connor & Goldberg (1)			
5-20-54	Filed Stipulation To Dismiss as to American Biltrite Rubber Co (1)			
5-20-54	Fld Stip. To Dismiss deft O'Connor & Goldberg (1)			
5-20-54	Fld Stipulation To Dismiss deft.Knomark Mfg.Co.,Inc.(1)			
5-20-54	Fld Stip. To Dismiss deft Essex Rubber Co (1)			

CIVIL DOCKET 50 C 229

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
5-20-54	Pursuant to Stipulations cause dismissed with prejudice and without costs as to defts Essex Rubber Co., et al 4 Draft- LaBuy, J			
5-20-54	Filed Answers Of Public Shoe Service Corp. To Interrogatories Propounded By Pltffs To The Defts (6) Mld ntcs 5-21-54 d			
5-26-54	Filed Notice & Proof of Service re; Pltff's Memorandum in Answer To Memo in Support of Motion Wiebold Stores, Inc, etc (2) d			
5-28-54	Upon stipulation of Parties, Reset for hearing plaintiff's motion to hold Defendant Griffin Mfg., Co., Inc., in contempt etc., -LaBuy, J.; Mailed notices 6-1-54 hh			
6-9-54	Stipulation to extend time in which Respondent Griffin Mfg. Co., Inc., is to file Answering Memorandum and time for hearing; Griffin's time to answer is extended until June 22, 1954; Hearing set for June 28, 1954. -LaBuy, J. Mailed notices 6-11-54 hh			
6-15-54	Filed Further Answer Of Deft. Armour And Company To Plaintiff's Interrogs. 3 B,17 and 19 of Oct 21, 1952 (46)			
6-15-54	Cause placed on trial list - LaBuy, J			
6-15-54	Order extd time 2 weeks for Howes Leather Co. to answer interrogs - LaBuy, J Mld ntc 6-15-54 d			
6-28-54	Pltffs mo. for ord. of contempt against deft Griffin Mfg. Co. & ans. dismd by agr. Stip of parties fld this day impounded until further ord. of court. DRAFT. LaBuy-J(2) Mld notices 7-1-54 tb			
6-29-54	Filed Fur. Answers of Howes Leather Co., Inc. to Interrogatories propounded under Rule 33 (59)			
7-9-54	Filed stipulation that time in which deft. Griffin Mfg. Co., Inc., is to furnish certain additional information pur. to par. 3 of the stip fld etc. tb			
7-29-54	By agreemt, answers of deft Griffin Mfg. Co. to pltff's interrogs are sealed & impounded with the Clerk. DRAFT.(1) Campbell-J Mld notices 7-30-54 tb			

(Cont. next page)

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
7-29-54	Filed Further answer of deft. Griffin Mfg. Co. to pltffs'			
	interrogs. pursuant stip. fld 6/22/54 (in sealed envelope)			
9-17-54	Filed Notice and Proof of Service (2)			
9-17-54	Filed Motion to Dismiss. (1)			
9-17-54	Filed Stip. to dismiss (1)			
9-17-54	Ord. to dismiss the defendants Catt's Pew Rubber Co., Inc.			
	and the Holtite Manufacturing Co., as per stip-DRAFT-			
	LaBuy, J. (1)			
	Mld. notices 9-20-54. P			
9-29-54	Filed further Answer of deft Kaplan Sons & Co. to pltf's			
	interrogs of 10-21-52 (49)			
"	Filed further Answer of deft Reick-Langendorf Co. to			
	pltf's interrogs of 10-21-52 (8) H			
10-8-54	Filed Notice (2)			
"	Filed Motion of Howes Leather Co. (20			
"	Order motion for production and inspection of documents,			
	motion of deft Howes Leather Co. Inc., taken under advise-			
	ment. Leave to file suppt. brief within 5 days, leave to			
	file answer brief within 15 days thereafter and leave to			
	file reply within 5 days thereafter - LaBuy, J. H			
	Mld ntcs 10-8-54 P			
10-14-54	Filed Stipulation (1)			
10-14-54	On stip. time of taking deposition of Thomas Darlington			
	extd to Oct 22, 1954 - LaBuy, J			
	Mld ntcs 10-15-54 d			
10-15-54	Filed Notice of taking depositions (4) P			
10-28-54	Filed Notice of filing & proof of service (2) tb			
11-4-54	Filed Notice and Motion under Rules 45 (b) and 30 (b) to			
	quash subpoena duces tecum, etc. (8) P			
11-5-54	Order motion under Rules 45 (b) and 30 (b) to quash sub-			
	poena and for protective order limitingscope of deposition			
	questioning hrd and contd to Nov 9,1954 - LaBuy, J			
	Mld ntcs 11-8-54 d			
11-5-54	Filed Notice and Motion under Rules 45 (b) and 30 (b) to			
	quash subpoena Duces Tecum and for Protective order limiting			
	Scope of Examination of Thomas S. Darlington. (8) P			
12-8-54	Filed Notice of Taking of depositions (3)			
12-8-54	Filed Notice re: interrogatories to Public Shoe Service Corp. (1)			

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DATE	FILINGS—PROCEEDINGS
12-8-54	Filed Interrogatories propounded by pltfs to Deft Public Shoe Service Corp (1) P
12-10-54	Filed Memorandum by Judge LaBuy (4)
12-10-54	Motion of defts Sears Roebuck & Wieboldt Stores for summ judg overruled - Mo deft Howes Leather for production of documents denied - LaBuy, J Mld ntcs 12-14-54 d
12-13-54	Filed Notice of Filing & Proof Of Service (1)
12-13-54	Filed Interrogatory propounded by pltfs to South Clark Street Shoe Repair Inc. etc under Rule 33. (1) d
12-21-54	Filed Notice and Proof of Service
"	Filed Motion
"	Order pltf's motion to appoint Master to preside at the further taking of the deposition of Ben Weinstein entd and contd before Judge LaBuy - Barnes, J. Mld ntcs 12-23-54 H
1-3-55	Notice Of Filing And Proof Of Service (motion to compel answer to questions)(2)
"	Fld Mo To Compel Answers To Questions Propounded Upon Oral Examination (7)(xx
1-3-55	Motion of pltff to compel answer to questions for oral examination contd to Jan 12,1955 before Judge LaBuy. - Campbell, J Mld ntcs 1-4-55
1-3-55	Ordered time of deft Public Shoe Service Corp. to answer interrogs. filed 12/8/54 extd to Jan 13,1955 - Campbell, J Mld ntcs 1-4-55 d
1-10-55	Filed Notice
"	Filed Answer to motion of pltfs to compel witness Ben Weinstein to answer certain questions propounded upon oral examination & exhibit (2)(11) H
1-12-55	Arguments hrd. on motion of pltf. to compel answers to questions propounded on oral examination and Ben Weinstein, President of deft. Public Shoe Service Corp. directed to answer questions -DRAFT-LaBuy, J. (1) Mld. notices 1-13-55. P
1-12-55	Order on motion deft. Public Shoe Service Corporation to extend time to file answers to interrogatories filed by pltfs. on December 8, 1954 to Feb. 2, 1955-LaBuy, J. Mld. notices 1-13-55. P
1-24-55	Filed Notice, Proof of service and Interrogatories propounded by pltfs to deft Goldblatt Bros. Inc. (2) H
1-28-55	Filed Stipulation
"	Enter order to extend time to answer interrog. to and including Feb. 15, 1955, per stip. - LaBuy, J. Mld ntcs 1-31-55 H
2-7-55	Filed Stipulation (1)
2-7-55	On stip, time of Ben Weinstein to answer interrogs extd to Feb. 17,1955 LaBuy, J
2-14-55	Filed stip. (1)
2-14-55	On stip tm of Goldblatt Bros. Inc. to ans interrogs cont'd to Mch 15, 1955. LaBuy-J Mld ntcs 2-16-55
2-17-55	Filed Stipulation (1) d
2-23-55	As per stipulation filed Feb. 17, 1955 time of deft. South Clark St. Shoe Repair Inc. to answer interrogatories extd. to March 15, 1955-LaBuy, J. Mld. notices 2-25-55. D

(L8)

DATE	FILINGS—PROCEEDINGS		
2-23-55	Filed Notice of Motions and Proof of Service	(2)	
2-23-55	Filed Motion to reset cause for trial.	(1)	
2-24-55	Enter order of reference to Master Manuel E. Cowen-DRAFT-LaBuy. J. Mld. notices 2-25-55.	(1) P	
2-24-55	Mailed C. C. of order to Master Cowen		tb
3-4-55	Filed Notice	(1)	
3-4-55	Lv to file instanter amendment to answer of Howes Leather Company Inc. to Second Amended Complaint so as to set forth information discovered pursuant to count's order of Dec 10,1954 - LaBuy, J Mld ntcs 3-8-55		d
3-4-55	Filed Amendment To Answer Of Howes Leather Company, Inc.,	(1)	d
3-9-55	Filed Notice of taking of deposition of Morris Martin	(2)	t
3-11-55	Filed Answer to Interrogatory Propounded by pltfs. to deft. South Clark St. Shoe Repair, Inc., etc. under Rule 33 of the F.R.C.P.	(1)	
3-11-55	Filed Notice of Filing and Proof of Service	(1) P	
3-14-55	Filed Notice and Proof of Service	(3)	
3-14-55	Filed Stipulation	(1)	
3-14-55	Enter order on stipulation to dismiss deft. Sears Roebuck & Co. with prejudice and without costs- DRAFT-LaBuy, J. Mld. notices 3-15-55.	(1) P	
3-14-55	Filed Notice of Filing and Proof of Service	(2)	
3-14-55	Filed Motion and Supplemental Complaint	(3)	
3-14-55	Enter order leave to file supplemental complaint under Rule 15(d)-DRAFT- (1) Order that summons issue to Max J. Crocker, et al. d/b/a Sam's Shoe Service and leave to amend on the face of supplemental complaint by striking on the first page thereof the name of Dan Grippo d/b/a Grippo & Co.-LaBuy, J. Mld. notices 3-15-55.		P
3-15-55	Issued summons and copy with copy of Supplemental Complaint for service on Albert H. Levin to U. S. Marshal		P
3-15-55	Enter order giving leave to pltfs. to file supplemental complt. and defts. given 10 days to answer same, etc. Summons to issue against Max J. Crocker, et al. Lv. to pltfs. to amend suppl. complt. on face-DRAFT-LaBuy, J. Mld. notices 3-17-55.	(2)	P
3-18-55	Filed Notice and proof of service re depositions	(3)	
"	Filed subpoena duces tecum retd served		H
-3-21-55	Filed Notice	(2)	
3-21-55	Filed Stipulation	(1)	
3-21-55	By stip. the cause as to defts Public Shoe Service Corp.and Wieboldt Stores Inc. is dismissed with prejudice but without costs Draft -Campbell, J Mld ntcs 3-24-55		d
3-23-55	Filed Notice and Proof of Service		
"	Filed Subpoena duces tecum retd served		H
3-24-55	Filed Answer of Goldblatt Bros. Inc. to Pltfs' interrogatories	(3)	
"	Ordered that briefs on deft's motion under Rules 45 (b) and 30 (6) to quash subpoena duces tecum and for protective order limiting scope of examination of Henry Niblack be filed with Judge LaBuy. Deft's supporting brief to be filed in 5 days. Opposing brief 5 days thereafter, reply brief 5 days thereafter- Campbell, J. Mld ntcs 3-24-55		H

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DATE	PLINGS—PROCEEDINGS
3-24-55	Filed Notice (2)
H	Filed Motion re preceding order (Also in 50 C 844) (3) H
3-25-55	Pltfs. motion for an order on deft. Goldblatt Bros. Inc. to answer certain interrogatories cont'd. to April 6, 1955 before Judge LaBuy-Campbell, J.
	Mld. notices 3-29-55. P
3-25-55	Filed Notice (1)
3-25-55	Filed Pltfs. motion under Rule 37 (a) for an order on Goldblatt Bros. (2)
3-25-55	Filed Appearance of John F. McClure as additional attorney for deft. Montgomery Ward & Co. P
3-29-55	Filed Notice and Proof Of Service (2)
3-29-55	Filed Motion For Leave To Amend Supplemental Complt filed herein (1)
3-29-55	Motion for lv to file amendment to supplemental complt contd to Apr 5,1955 before Judge LaBuy - Campbell, J
	Mld ntcs 3-31-55 d
4-4-55	Enter agreed order amending subpoena duces tecum directed to Henry Niblock, etc. - DRAFT - LaBuy, J.
	Mld ntcs 4-5-55
4-4-55	~~Filed pltf's objections to interrogatories propounded to them by deft Armour & co.~~ (NA) H
4-5-55	On pltffs motion leave to file amendment to supplemental complaint Draft - LaBuy, J
	Mld ntcs 4-6-55 D
4-5-55	Filed Amendment to supplemental complaint (1)
4-6-55	Filed Notice (1)
4-6-55	Filed Motion pursuant to Civil Rule No 4 of the U.S.District Courtfor the Northern Dist.Of Ill (3)
4-6-55	Motion pltf for order on deft. Goldblatt Bros. Inc to answer interrogs contd to Apr 11,1955 on mo deft - LaBuy, J
	Mld ntcs 4-8-55 d
4-7-55	Iss. summons & copy with copy of 2nd amended complt, supplemental complt & amendment to supplemental complt for service on A. Leveton & Co. Inc. mg
4-7-55	Fld Ntc & proof of service re depositions (3)
4-7-55	Fld Ntc & proof of service (3)
4-7-55	Fld Ntc & proof of service re mo. under rule 34 (2)
4-7-55	Fld Mo. under Rule 34 (6)
4-7-55	Mo. under Rule 34 for the production of designated documents ent'd & cont'd to April 11, 1955 on mo. deft. LaBuy-J
4-7-55	Ord. pur. to Civil Rule No. 4 of U.S.D.C. Nor. Dist. of Ill. DRAFT LaBuy-J (2)
4-11-55	Fld ntc (2)
4-11-55	Fld mo. of Howes Leather Co. pur. to Rule 30(b) with respect to deposition of Henry F. Keating (4)
4-11-55	Fld objections of Howes Leather Co. to pltffs mo. under Rule 34 (3)
4-11-55	Fld Ntc & proof of service (2)
4-11-55	Fld stip. (2)
4-11-55	Ord. on stip. dismissing defts K. Kaplan Sons & Co. et al with prej. & without costs. DRAFT LaBuy-J (1)
4-11-55	Fld ntc of mo. (2)
4-11-55	Fld Motion under Rule 30(b) (2)

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DATE	FILINGS—PROCEEDINGS	
4-11-55	Mo. pltff for ord. on Goldblatt Bros. to answer interrogs. cont'd by agreement to April 12, 1955. LaBuy-J Mld ntcs 4-12-55	
4-11-55	Order on defts Howes Leather Co. and Armour & Co. to produce documents under Rule 34. Deposition of Robert L. Aste shall be taken by pltfs at New York, N. Y., etc. The deposition of Henry F. Keating shall be taken by pltfs at Boston, Mass., etc. - DRAFT - LaBuy, J. Mld ntcs 4-15-55	
4-12-55	Arguments heard on motion of pltf for order on Goldblatt Bros. to answer interrogatories and said deft directed to answer, etc. - DRAFT - LaBuy, J. Mld ntcs 4-15-55	H
4-13-55	Filed summons retd served as to A. Leveton & Co.	2.60 H
4-15-55	Filed Notice & proof of service	(3)
4-15-55	Fld Mo. under Rule 37(d) for an ord. striking the pleadings filed herein by deft Jack Klinger d/b/a A. Leveton & Co. & for judgment by default against deft.	(2)
4-15-55	Mo. under Rule 37(d) for an ord. striking pleadings of deft Jack Klinger & for judgment by default against said deft argued & cont'd to April 27, 1955 to allow for service of additional notice on deft for taking of deposition. LaBuy-J Mld ntcs 4-18-55	
4-15-55	Filed Notice of taking of depositions & proof of service	(2)(1) t
4-19-55 "	Filed Notice, Motion and Stipulation & proof of service On stipulation cause dismissed as to deft South Clark St. Shoe Repair, Inc., et al with prejudice and without costs - LaBuy, J. Mld ntcs 4-21-55	(4) H H
4-19-55 " "	Filed Notice Filed Motion Arguments heard on motion under Rule 45 (b) to quash or modify the subpoena duces tecum served on M. A. Landberg and hearing adjourned to April 26, 1955 and counsel to submit law citations - LaBuy, J. Mld ntcs 4-21-55	(also 50 C 844) H
4-20-55 "	Filed Notice and proof of service, and copy Filed Pltfs' Memo in support of their subpoena duces tecum	(5) H
4-21-55 "	Filed Notice and proof of service Motion of J. Leonard Kovitz for leave to file appearance for deft Jack Klinger and to halt the taking of his deposition noticed for April 21, 1955 contd to April 22, 1955 before Judge LaBuy - Campbell, J. Mld ntcs 4-22-55	 H
4-22-55	Filed Notice and Proof of Service	(2)
4-22-55	Arguments heard on motion of I. Leonard Kovitz for leave to file appearance for deft. Jack Klinger and to halt the taking of his deposition and hrg. adjourned to April 26, 1955-LaBuy, J. Mld. notices 4-25-55.	P
4-25-55 "	Filed Notice and proof of service Filed Memo of M. A. Landberg in support of his motion to quash etc.,and copy	(1) (13)H
4-26-55	Fur. argts heard & advisement on mo. of M.A. Landberg to quash or modify subpoena duces tecum. LaBuy-J	
4-26-55	Filed memo	(1)
4-26-55	Leave to file appearance of I. Leonard Kovitz as atty for deft Jack Klinger & to postpone taking of deposition to May 9, 1955 & leave to pltffs to withdraw motions under Rule 37(d) DRAFT LaBuy-J Mld ntcs 4-29-55	(1) t

DATE	PROCEEDINGS
4-26-55	Filed appearance & jury demand (1) t
4-29-55	Filed Notice and proof of service
"	Filed jury demand
"	Order joint motion of all pltfs and defts to vacate order of Feb.24,1955 contd to May 6, 1955 and hearing before Master reset, etc. - DRAFT - LaBuy, J.
	Mld ntcs 5-2-55 K
4-29-55	Filed deposition of Henry F. Keating
5-2-55	Filed Three Notices
"	Filed Two Motions to dismiss
"	Order motion that pursuant to Rule 12(b) of the Rules of Civil Procedure, deft A. Leveton Co. be dismissed as deft in above entitled cause taken under advsmt and leave to parties to file briefs and cause contd for hearing to May 6, 1955 - 2 DRAFTS - LaBuy, J.
	Mld ntcs 5-3-55 K
5-4-55	Filed Plaintiffs memorandum in answer to Memorandum of deft. A. Leveton Co. to dismiss the causes jk
5-5-55	Filed Reply of deft. A. Leveton Co. to memorandum of pltfs. jk
5-4-55	Filed Notice and Proof of service of pltfs. memorandum (2)
5-6-55	Filed Notice (3)
5-6-55	Filed Notice and Proof of Service (1)
5-6-55	Arguments hrd. on motion of deft. A. Leveton Co. for dismissal under Rule 12 (b) and advisement-LaBuy, J.
	Mld. notices 5-9-55. P
5-6-55	Arguments hrd. on joint motion of all parties in each of cases to vacate order of reference to Master entered Feb. 24, 1955 and advisement-LaBuy, J.
	Mld. notices 5-9-55. P
5-6-55	Filed Memo
5-6-55	Mo. of A. Leveton Co. to dismiss sustained & cause as to it is dismissed-motions to vacate order referring cause to master are overruled. LaBuy-J (2)
	Mld ntcs 5-10-55 t
5-9-55	Filed Deposition of Griffin Manufacturing Co Inc.
5-17-55	Filed Further answer of deft. Goldblatt Bros. Inc. to Interrogatory 1 propounded by pltfs. (12) P
5-18-55	Filed Notice and Proof of Service (3)
5-18-55	Filed Motion for order under Rule 37 for a Rule to Show cause why the deft. Jack Klinger d/b/a A. Leveton & Co. should not be held in contempt of Cour t (3) and Exhibits $15.00
5-18-55	Enter order under Rule 37 for rule to show cause why deft. Jack Klinger should not be held in Contempt. Leave to respondent to answer in 30 days and hrg. on rule and answer set for June 29, 1955-LaBuy, J.
	Mld. notices 5-20-55. P
5-20-55	Filed deposition of Jack Klinger
5-20-55	Filed summons retd unexecuted K
5-18-55	Filed Appearance of attys. for Griffin Mfg. Co. (1) P

73 Clerk's Certificate to foregoing paper omitted in printing.

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Exhibit "C" to Answer

In the United States District Court Northern District of Illinois Eastern Division

No. 50 C 229 Civil

WILLIAM ROHLFING, ALEX PIECH, BEN VITALE, CHESTER MAJEWSKI, CARMINE CRISTIANO, WILLIAM ROTHOUPT, MARTIN F. WALZ, FRANK MAGDALIN, THOMAS CECCOLA, WILLIAM ENGLISH, CHARLES HEDIN, JOSEPH MALICKI, CLIFFORD O'BEREM, PHILLIPPE BARONELLO, WALTER CWENKALA, PHIL LIBERTY, DOMINICK COLOMINO, WILLIAM CASSANO, ELI BOSNJAK, C. W. BECKWITH, ANGELO EMPERO, JOHN FATIGATO, JOE BALSAMO, FRED VITALE, LESLIE ROLANDO, VETO PETRUSO, LOUIS NEWMAN, UDELL SCHUMACHER, K. KIEL, CHARLES GRANATRA, BEN MATHEWS, ISAAC CRAPE, VICTOR TREVISANT, GEORGE DOCTORIAN, PAUL TEUBER, GUNNAR JOHANAN, FRANK SHERLOCK, ANTONIO NOTO, DAVID MITCHELL, RALPH FERRANTE, EGISTO CARRARINI, VITO COCCUITT, LOUIS CARRARINI, JOSEPH CAVOTO, JOSEPH ADDUCI, THOMAS NIGOHOSIAN, JOSEPH F. SIENKIEWICZ, CHARLES PAGER, JOSEPH ARCABASCIO, JOSEPH WALIK, JOSEPH CERMAK, CHRIS NITCHOFF, ROCCO MANZO, ANTONIO LANDAZZI, PHILLIP CATUARA, JOSEPH PANZELLA, RAYMOND WARD, WILLIAM N. SUTY, FRANK MAGNAVITA, JOHN MARCONI, EUGENE FERAZZI, JOSEPH VARANO, C. DE MATTEO, JOE MUSACCHIO, HARRY SHAYNE, JOHN TESAR, JOEL SHABOZ, OTTO WIEGAND, NICHOLAS SUVLER, WILLIAM STAMOS, GUS THEODORE, JOHN LOCHT, NELS OLSON, TONY ALEO, NICK PAPPAS, JOSEPH MORINO, ABE GORDON, ANTHONY BEDOE, JOE RAGUSO, ALBERT SECKER, GUS GALIAS, EDWARD GAULKE, BRUCE GWYNN, WILLIAM PAXTON, FRANK BOGAR, PAUL BRONGIEL, JOSEPH COHEN, WILLIAM HENSEL, JOHN STRINO, MIKE SCHIAVONI, PAUL SWORTZ, JOHN GIRLANDO, LAD KUS, EDWARD LUCHT, OTTO RESNAIS, CROCE QUINTILLO, WILLIAM CHIAPPETTA, FRANK VITALE, EMIL PERRUSO, CAESAR VITALE, FRANK CAMERANO, PLAINTIFFS

vs.

CAT'S PAW RUBBER CO., INC.: THE HOLTITE MANUFACTURING CO., A CORP.: UNITED STATES RUBBER CO., A CORP.: BILT-

RITE RUBBER CO., (CORP.: PANTHER- PANCO RUBBER CO., A CORP.: ESSEX RUBBER CO., A CORP.: HOWES LEATHER CO., INC.: ARMOUR LEATHER CO., A CORP.: GRIFFIN MANUFACTURING CO., A CORP.: KNOMARK MANUFACTURING CO., A CORP.: SEARS ROEBUCK & COMPANY: MONTGOMERY WARD AND COMPANY, INC.: GOLDBLATT BROS., INC.: WIEBOLT STORE STORES, INC.: O'CONNOR & GOLDRERG: PUBLIC SHOE SERVICE CORP.; DAN GRIPPO, d/b/a GRIPPO & CO.: SOUTH CLARK STREET SHOE REPAIR, INC., d/b/a. SAM THE SHOE DOCTOR: JACK KLINGER, d/b/a A. LEVITON CO.: K. KAPLAN SONS & CO.: RUDOLPH E. KAPLAN, ELI K. KAPLAN, J. GILBERT KAPLAN, RUBEN CHUPAK, d/b/a REICK-LANGENDORF CO., DEFENDANTS.

SECOND AMENDED COMPLAINT—Filed April 10, 1952

75 The plaintiffs, set forth in the caption above, by their attorneys, Francis Heisler, Pearl Baer, and Richard Orlikoff, pursuant to leave of Court heretofore granted, herewith present their Second Amended Complaint and complain of the defendants, set forth in the caption above, and for cause of action say;

COUNT I

1. Plaintiff, WILLIAM ROHLFING, during the period from January 1, 1945 to November 15, 1949 operated an independent shoe repair shop located at 2537 West 63rd Street, Chicago, Illinois. During the period from December 1, 1949 to January 25, 1952, the plaintiff operated an independent shoe repair shop located at 1017 East 61st Street, Chicago, Illinois.

2. The plaintiff, in addition to furnishing shoe repair services to the public, also sold retail to the public such merchandise as customarily and usually appertains to shoe-repair services. The plaintiff, during the afore-described period, sold shoe laces, shoe polish, rubber heels, leather soles and other kindred items at retail. The aforesaid items were also utilized by plaintiff to provide shoe repair service to the public. The aforesaid items are hereinafter referred to as "shoe supplies."

3. This action arises under Sections 1, 2, 4, 5 & 7 of the Act of July 2, 1890, Chapter 647, 26 Stat. 209 as Amended,

15 U.S. Code, Sec. 1 et seq. (commonly known as the Sherman Anti-Trust Act); and this action further arises under Sec. 1, 12 and 16 of the Act of October 15, 1914, Chapter 323, 38 Stat. 730 as Amended; 15 U.S. Code, Sec. 12-27; 18 U.S. Code, Sec. 402 (commonly known as the Clayton and the Robinson-Patman Acts), and hereinafter referred to as the "Acts."

4. The defendants named in this paragraph are "manufacturers" of rubber goods commonly used in the shoe repair trade, and these defendants are engaged in the shipping and distributing of the rubber goods manufactured by them throughout various parts of the United States, including
Illinois. The manufacture, transportation and dis-
76 tribution of such rubber goods by the defendants named in this paragraph is done either directly or through subsidiary or associated companies. These defendants will be referred to herein collectively as "rubber goods manufacturers." The name, place of business, trade name used (if any), and the state of incorporation (if incorporated) of each such defendant appears in Table I below:

TABLE I

Name	Address of Principal Office	Trade Name	State of Incorp.
Cat's Paw Rubber Co., Inc.	Warner & Ostend Baltimore 30	Same	Md.
The Holtite Manufacturing Co., a Corporation	Warner & Ostend Baltimore 30	Same	Md.
United States Rubber Co., a Corporation	1230 6th Ave. of Americas, NYK	Same	N. J.
Essex Rubber Co., a Corp.	May & Beake Sts. Trenton, N. J.	Same	N. J.
Biltrite Rubber Co., a Corp.	Chelsea 50, Mass.	Same	Mass.
Panther-Panco Rubber Co., a Corp.	31 Hiland St. Chelsea, Mass.	Same	Mass.

5. The defendants named in this paragraph are manufacturers of leather goods commonly used in the shoe repair trade; these defendants are engaged in the shipping and distributing of the leather goods manufactured by them throughout various parts of the United States, including Illinois. The manufacture, transportation and distribution of such leather goods by the defendants named in the paragraph is done either directly or through subsidiary or associated companies and these defendants will be referred to herein collectively as "leather goods manufacturers." The

name, place of business, trade name used (if any), and the state of incorporation (if incorporated) of each such defendant appears in Table II below:

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TABLE II

Name	Address of Principal Office	Trade Name	State of Incorp.
Howes Leather Co., Inc.	325 Summer St. Boston, Mass.	Same	Mass,
Armour Leather Co., a Corp.	173-5 N. Franklin Chicago, Ill.	Same	Ill.

6. The defendants named in this paragraph are manufacturers of shoe polish commonly used in the shoe repair trade, and these defendants are engaged in the shipping and distributing of shoe polish manufactured by them throughout various parts of the United States, including Illinois. The manufacture, transportation and distribution of shoe polish by the defendants named in this paragraph is done either directly or through subsidiary or associated companies and these defendants will be referred to herein collectively as "shoe polish manufacturers." The name, place of business, trade name used (if any), and the state of incorporation (if any) of each such defendant appears in Table III below:

TABLE III

Name	Address of Principal Office	Trade Name	State of Incorp.
Griffin Mfg. Co., a Corp.	410-424 Willoughby Ave., Brooklyn 5	Same	N. Y.
Knomark Mfg. Co., a Corp.	330 Wythe Avenue Brooklyn, N. Y.	Same	N. Y.

7. The defendants named in this paragraph are the owners and/or the operators of department or chain stores wherein shoe repair services are offered to the public. These defendants also are engaged in the sale of retail merchandise appertaining to shoe services. These defendants purchase merchandise manufactured and/or sold by the defendant manufacturers described in paragraphs 4, 5, and 6 above. These defendants are referred to herein collectively as "department or chain stores." The name, place of business, trade name used (if any), and the state of incorporation (if incorporated) of each such defendant appears in Table IV below:

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TABLE IV

Name.	Address of Principal Office	Trade Name	State of Incorp.
Sears, Roebuck & Co.	Suite 1440, 160 S. LaSalle St., Chicago	Sears	N. Y.
Montgomery Ward & Co., Inc.	619 W. Chicago Ave. Chicago 7, Ill.	Same	Ill.
Goldblaft Bros., Inc.	333 S. State St. Chicago 4, Ill.	Same	Ill.
Wiebolt Stores, Inc.	106 S. Ashland Blvd. Chicago 7, Ill.	Same	Ill.
O'Connor & Goldberg	205 S. State St. Chicago 4, Ill.	O.G.'s	Ill.
Public Shoe Service Corp.	120 S. LaSalle St. Chicago 3, Ill.	Same.	Ill.
Dan Grippo, d/b/a. Grippo & Company	202 S. State St. Chicago, Ill.	Same	—
South Clark Street Shoe Repair, Inc., d/b/a Same the Shoe Doctor	129 W. Washington St. & 128 S. Clark St., Chicago, Ill.	Same	—

8. The defendants named in this paragraph are wholesalers or jobbers of shoe materials and supplies and are commonly known to the shoe trade as "finders." These defendants purchase merchandise from various of the defendant manufacturers described in paragraphs 4, 5 and 6 above, and/or distribute the merchandise manufactured by various of the aforesaid defendant manufacturers. These defendants sell and/or deliver shoe supplies to department or chain stores in various parts of the United States, including the defendant department or chain stores, and these defendants further sell and/or deliver shoe supplies to independent retail stores in the United States. These defendants are sometimes referred to collectively herein as "preferred finders." The name, place of business, trade name (if any), and the state of incorporation (if incorporated) of each such defendant appears in Table V below:

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TABLE V

Name	Address of Principal Office	Trade Name	State of Incorp.
Jack Klinger, d/b/a A. Leviton & Co.	711 W. Roosevelt Rd. Chicago, Ill.	Same	—
K. Kaplan Sons & Co.	711 N. Milwaukee Ave. Chicago, Ill.	Same	—
Rudolph E. Kaplan, Eli Kaplan, J. Gilbert Kaplan, Ruben Chupak d/b/a Reick-Langendorf Company	31 S. Wells Street Chicago, Ill.	Same	—

9. The shoe leather, rubber goods, and shoe polish that is distributed in Illinois by the defendants named in para-

graphs 4, 5 and 6 is manufactured almost entirely in States other than Illinois and is shipped across state lines in order to be distributed in Illinois.

10. Shoe leather, rubber goods and shoe polish manufactured by the defendants named in paragraphs 4, 5 and 6 above is distributed by these defendants to "finders," wholesalers or jobbers throughout the United States, including the defendant "finders," and these defendant manufacturers further distribute the aforementioned products to department or chain stores throughout the United States, including the defendant department or chain stores, and these defendants further distribute the afore-mentioned products to independent shoe repair stores throughout the United States.

11. The defendant leather goods manufacturers, rubber goods manufacturers, and shoe polish manufacturers occupy a monopolistic position in the manufacture and distribution of the aforementioned products in the United States, and this monopolistic position enables these defendants to monopolize and to restrain trade in the aforementioned products in Chicago, Illinois.

12. The defendant department or chain stores are, or were, in competition with independent shoe repair stores in Chicago, Illinois, including plaintiff's store, in the business of supplying shoe repair services and shoe supplies to consumers of such services and supplies in Chicago, Illinois.

80 13. During the period from January 1, 1945 to the time of the filing of this action, shoe supplies were distributed in Chicago in the following manner:

The defendant manufacturers each maintained a sales force to sell and to distribute the product manufactured by it. These defendants employed salesmen who called upon "finders" and retail shoe service stores for the purpose of selling to them the products manufactured by the defendants. In the shoe industry such salesmen are called "missionaries." Retail shoe supply stores placed their orders for shoe supplies with the "missionaries" who called upon them. The defendant manufacturers then filled these orders either by delivering the ordered supplies directly to the retailer, which delivery is termed a "drop shipment" in the shoe repair industry, or by placing the

order with a "finder" for delivery to the retailer. Payment for the order was made by the retailer either directly to the manufacturer or payment was made to the "finder" who was designated by the parties at the time the order was placed. In the latter case, the "finder" then made payment to the manufacturer for such shipment, after deducting from the sale price a "finder's commission."

14. During the period from January 1, 1945 to the time of the filing of this action, and prior thereto, the defendants, "rubber goods manufacturers," (named in paragraph 4, Table I)), the defendants, "leathergoods manufacturers," (named in paragraph 5 (Table II)); the defendants, "shoe polish manufacturers" (named in paragraph 6 (Table III)) have contracted, combined and conspired with the defendant "finders" named in paragraph 8 (Table V)) and with the defendants, "department or chain stores" (named in paragraph 7 (Table IV)) and with each other and with other persons and corporations whose names are unknown to the plaintiff to monopolize and to attempt to monopolize the sale of shoe-repair supplies as leather and rubber heels, leather and rubber soles, shoe polish and other merchandise pertaining to shoe-repair service in the City of Chicago and in the adjoining areas, and they further combined and conspired to suppress competition in the sale of "shoe supplies" in interstate trade and commerce, in violation of the provisions of the Acts hereinabove referred to, in the following manner:

(a. The defendant manufacturers named in paragraphs 5, 6 and 7 established and maintained a fixed, uniform and rigid system of pricing, distribution and sale of shoe repair materials whereunder such materials were delivered through the defendant "finders" to the defendant chain or department stores at prices lower than the price at which similar materials were made available by the defendant manufacturers and the defendant "finders" to independent shoe repair stores in Chicago, Illinois, including the store operated by the plaintiff. The lowered price to the defendant chain or department stores was effectuated by means of discounts and or rebates which were granted by the defendant manufacturers to the defendant "finders" and to the defendant "chain or department stores." Such discounts and rebates were much greater than any discount

or rebate offered to, available to, or granted to non-defendant finders and independent shoe repair stores, including that of the plaintiff, for the purchase of materials of the same grade and quality.

(b. By means of the uniform, fixed, and arbitrary method of distributing shoe repair supplies, established by the defendant manufacturers and the defendant "finders" in the City of Chicago, the plaintiff was prevented from purchasing shoe supplies from any defendant manufacturer or from any defendant finder, or non-defendant finder, or from any source whatsoever at a price as low as that paid by plaintiff's competitors, the defendant department or chain stores, for shoe supplies of the same grade and quality.

(c. The defendants knowingly discriminated against independent shoe repair men in Chicago, Illinois, including the plaintiff, for the purpose of restraining the sale of shoe supplies in interstate commerce, and such restraint was made with the intent and effect of injuring in-
82 dependent shoe repair stores, including plaintiff's, and of destroying competition between independent shoe repair stores, including plaintiff's, and the defendant chain or department stores, in violation of the anti-trust laws of the United States.

(d. As a direct result of the violations of the anti-trust laws set forth above, the defendant chain or department stores were able to expand their shoe repair services and their volume of shoe repair business, all at the expense and consequent injury of independent shoe repair stores, including that of plaintiff, and to increase the volume of their shoe repair business and their shoe supply sales, while the volume of the shoe repair business and the shoe repair sales of independent shoe repair stores, including plaintiff's, decreased.

15. As a result of the foregoing combination and conspiracy the consuming public in Chicago, Illinois was prevented from purchasing shoe supplies and shoe repair services at neighborhood shoe repair stores as cheaply as such supplies and services could be purchased at chain or department stores located in the "loop" or downtown district of Chicago, Illinois. Thus a person who dwelled in an outlying northern, southern, or western district of Chi-

cago, Illinois was required to travel into the Loop, or downtown district of Chicago, Illinois, in order to obtain the lowest-priced shoe repair services, and if such travel was inconvenient or impractical the person was required to pay prices for shoe repair services at an independent shoe repair store located in his outlying district that were higher than those obtainable in the Loop.

16. Each defendant manufacturer named in paragraph 5, 6 and 7 above, and each defendant finder named in paragraph 9 above granted to the defendant chain or department stores the unreasonable, arbitrary, and illegal rebates and discounts set forth in paragraph 15 above, in violation of the Robinson-Patman Act, 15 U.S.C. § 12-27.

83 17. The larger discounts and rebates granted by the defendant manufacturers and "finders" to the defendant chain or department stores of the purchase of shoe supplies of the same grade and quality as that purchased from the defendant manufacturers by independent shoe repair stores, including plaintiffs, which discounts and rebates are described in paragraphs 15 and 16 of this Amended Complaint, were not justified by savings in the cost of manufacture by the defendant manufacturers of shoe supplies, nor were the larger discounts and rebates justified by savings or economies effected by the defendants in the sale or delivery of shoe supplies to the defendant chain or department stores.

18. During the period from January 1, 1945 to the time of the filing of this lawsuit, and prior thereto, the defendants combined and conspired to fix the price at which independent shoe repair stores could purchase shoe repair supplies, and during the aforementioned period the defendants fixed the price of shoe repair supplies to independent shoe repair shops at an arbitrary and unreasonably high level.

19. As a result of the violations of the anti-trust laws set forth hereinabove the plaintiff has suffered both "general" and "special" damages. The "general" damages of plaintiff have been the decrease in the share of the shoe repair business in Chicago, Illinois, and the decrease in the volume of business and lowered profits, together with the loss of capital investment, all of which have been experienced by plaintiff as a result of the combination and

conspiracy of the defendants which is set forth hereinabove. The "special" damages which plaintiff has suffered have been the higher prices plaintiff has been forced to pay for shoe repair supplies of the same grade and quality as those supplies sold to plaintiff's competitors, the defendant chain or department stores.

20. The defendant manufacturers and finders have sold large quantities of shoe materials and supplies to the defendant chain or department stores at prices lower than the prices charged independent shoe repair stores, including plaintiff's. The exact and specific terms of such sales and the exact amount of shoe materials and supplies sold, and the names of the persons effecting such sales are all facts which lie peculiarly within the knowledge of the defendants, and are not known by plaintiff, and for that reason plaintiff is unable to allege said acts specifically. However, plaintiff says that such rebates and discounts were not less than 20% of the price paid by plaintiff for similar materials, and plaintiff believes that the illegal rebates and discounts averaged 33⅓% of his purchases.

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21. Since the commencement of this action the violations of the antitrust laws complained of herein have continued, causing further and great injury to the plaintiff. Plaintiff will, at a future date, but prior to the trial of this action, request leave of this Court to file a Supplemental Complaint setting forth additional violations of the antitrust laws by the defendants and additional injury plaintiff has suffered as a result of such additional violation.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff further prays that the Court order the defendants and each of them to make a full accounting of all discriminatory price differentials allowed by them to the defendants-preferred-buyers, named in

paragraph 6 (Table IV) and that the defendants-preferred-buyers named in paragraph 6 (Table IV) make a full accounting of all discriminatory price differentials, received by them from the other defend-
85 ants during the two-year period prior to the filing of this suit.

COUNT II

22. Plaintiff, JOHN TESAR, is and has been since November 25, 1948, the operator of an independent shoe repair shop located at 2554 South Lawndale Avenue, Chicago, Illinois.

23. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraph 2 to 21, inclusive, of Count I this Second Amended Complaint.

24. The aforesaid illegal agreements, monopolies, and conspiracies, including the granting and receiving of illegal rebates, and the setting of illegal prices in restraining of inter-state trade and commerce are continuing, and under Section 16 of the Clayton Act, Plaintiff is entitled to the issuance of an injunction enjoining the continuance of the aforesaid conspiracies, monopolies and other acts by the defendants in restraint of trade.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. That the Court order the defendants and each of them to make a full accounting of all discriminatory price differentials allowed by them to the defendants-preferred-buyers, named in paragraph 7 (Table IV) and that the defendants-preferred-buyers named in paragraph 7 (Table IV) make a full accounting of all discriminatory price differentials received by them from the other defendants during the two-year period prior to the filing of this suit.

86 C. That an order may be entered by this Honorable Court that the defendants herein and each

of them and all of their respective officers, directors, agents and all persons acting or claiming to act on behalf of the defendants or any of them be permanently enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, any attempts at monopolization of the shoe-repair industry by confederation agreements, combinations and conspiracies or by means of other unlawful acts, and that they be permanently enjoined in engaging in acts in restraint of interstate trade and commerce, including the granting and receiving of discriminatory rebates and setting of discriminatory prices in the leather and shoe-finding industry. And the plaintiff prays that such further and other orders may be entered as the Act provides and justice requires.

COUNT III

25. Plaintiff, TONY ALEO, is and has been since October 1, 1946, the operator of an independent shoe repair shop located at 9541 Wrightwood Avenue, Chicago, Illinois.

26. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraph 2 to 21, inclusive, of Count I of this Second Amended Complaint.

27. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

87 B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of Count II of this Second Amended Complaint.

COUNT IV

28. Plaintiff, JOSEPH BALSAMO, is and has been since January 1, 1945, the operator of an independent shoe repair

shop located at 4817 West West End Avenue, Chicago, Illinois.

29. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

30. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained, paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT V

31. Plaintiff, PHILLIPPE BARONELLO, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 903 North Rockwell Street, Chicago, Illinois.

32. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

of Count I of this Second Amended Complaint.

88 33. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by

the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained, paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT VI

34. Plaintiff, CHARLES WILLIAM BECKWITH, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 755 West 78th Street, Chicago, Illinois.

35. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

36. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs
89 B and C of the prayer of Count II of this Second Amended Complaint.

COUNT VII

37. Plaintiff, ANTHONY BEDOE, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3955 Fullerton Avenue, Chicago, Illinois.

38. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

39. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT VIII

40. Plaintiff, FRANK BOGAR, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2145 South Pulaski Road, Chicago, Illinois.

41. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

42. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT IX

43. Plaintiff, ELI BOSNJAK, is and has been since September 1, 1948, the operator of an independent shoe repair shop located at 1171 East 53rd Street, Chicago, Illinois.

44. Plaintiff here repeats and realleges as though fully

set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

45. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

91 COUNT X

46. Plaintiff, PAUL BRONGIEL, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 1811 West 38th Street, Chicago, Illinois.

47. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

48. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XI

49. Plaintiff, Dominick Calomino, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 5020 South Lake Park Avenue, Chicago, Illinois.

50. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

51. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

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B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XII

52. Plaintiff, Frank Camerano, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2802 Wallace Street, Chicago, Illinois.

53. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

54. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the

defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XIII

55. Plaintiff, EGISTO CARRARINI, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 13741 South Leyden Avenue, Chicago, Illinois.

93 56. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

57. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XIV

58. Plaintiff, WILLIAM CASSANO, is now and has been since February 1, 1947, the operator of an independent shoe repair shop located at 5244 South Cornell Avenue, Chicago, Illinois.

59. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive of Count I of this Second Amended Complaint.

60. Plaintiff here repeats and realleges as though fully

set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

94 B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XV

61. Plaintiff, PHILLIP CATUARA, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2856 South Wallace Street, Chicago, Illinois.

62. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

63. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, and is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XVI

64. Plaintiff, Joseph Cermak, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 6707 West 26th Street, Berwyn, Illinois.

65. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

66. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

95 Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XVII

67. Plaintiff, Andrew Chapetta, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2222 East 75th Street, Chicago, Illinois.

68. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

69. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the

Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XVIII

70. Plaintiff, Vito Cocciti, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 6448 South Ashland Avenue, Chicago, Illinois.

96 71. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

72. Plaintiff here repeats and reallages as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XIX

73. Plaintiff, Gus Colias, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 832 South Oak Park Avenue, Oak Park, Illinois.

74. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

75. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

97

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XX

76. Plaintiff, WALTER CWENKALA, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 1401 West Division Street, Chicago, Illinois.

77. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

78. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Compaint.

WHEREFORE, plaintiff prays that;

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXI

79. Plaintiff, GEORGE DOCTORIAN, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3753 Lawrence Avenue, Chicago, Illinois.

80. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

98 81. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXII

82. Plaintiff, ANGELO EMPERO, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 407 South Kedzie Avenue, Chicago, Illinois.

83. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

84. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and

C of the prayer of Count II of this Second Amended Complaint.

99 COUNT XXIII

85. Plaintiff, JOHN FATIGATO, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 758 South Kedzie Avenue, Chicago, Illinois.

86. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

87. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXIV

88. Plaintiff, RALPH FERRANTE, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 8923½ South Loomis Street, Chicago, Illinois.

89. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

90. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of

the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXV

91. Plaintiff, EUGENE FERRAZZI, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 10311 South Hale Avenue, Chicago, Illinois.

92. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

93. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided by the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Secand Amended Complaint.

COUNT XXVI

94. Plaintiff, ABE GORDON is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 1913 West Belmont Avenue, Chicago, Illinois.

95. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

96. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXVII

97. Plaintiff, WILLIAM GRABER, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3207 West Lake Street, Chicago, Illinois.

98. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

99. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XXVIII

100. Plaintiff, Charles Granata, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3504 West North Avenue, Chicago, Illinois.

101. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

102. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XXIX

103. Plaintiff, Lad Kus, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2508 West 51st Street, Chicago, Illinois.

104. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

105. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defen-
103 dants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be

allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXX

106. Plaintiff, PHILIP LIBERTY, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 6751 Diversey, Chicago, Illinois.

107. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

108. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against denfendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXXI

109. Plaintiff, FRANK MAGNAVITA, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 9554 South Chicago Avenue, Chicago, Illinois.

104 110. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

111. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXXII

112. Plaintiff, ROCCO MANZO, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 1816 Lake Street, Melrose Park, Illinois.

113. Plaintiff here repeats and alleges as though fully set out and herein contained, paragraphs 8 to 21, inclusive, of Count I of this Second Amended Complaint.

114. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

105 B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXXIII

115. Plaintiff, BEN MATHEWS, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 608½ West Madison Street, Chicago, Illinois.

116. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

117. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXXIV

118. Plaintiff, DAVID MITCHELL, is and has been since August 1, 1946, the operator of an independent shoe repair shop located at 102 Broadway, Melrose Park, Illinois.

119. Plaintiff here repeats and realleges as though fully set out and herein contained paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

120. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

106 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff, a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XXXV

121. Plaintiff, Joseph Musacchio, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 601 East 87th Street, Chicago, Illinois.

122. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

123. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XXXVI

124. Plaintiff, Tony Nato, is and has been since January 1, 1945, the operator of an independent shoe repair
107 shop located at 2716 North Laramie, Chicago, Illinois.

125. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

126. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXXVII

127. Plaintiff, LOUIS NEWMAN, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 923 East 55th Street, Chicago, Illinois.

128. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

129. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff, a reasonable attorneys' fee and its
108 costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXXVIII

130. Plaintiff, THOMAS NIGOHOSIAN, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 6310 South Kimbark Avenue, Chicago, Illinois.

131. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

132. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of

the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XXXIX

133. Plaintiff, CHARLES PAGER, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 1358 West 79th Street, Chicago, Illinois.

134. Plaintiff here repeats and realleges as though fully set out and contained herein, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

135. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

109 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XL

136. Plaintiff, WILLIAM PAXTON, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2153 South Kedzie Avenue, Chicago, Illinois.

137. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

138. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its cost, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XLI

139. Plaintiff, EMIL PERUSO, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2445 East 79th Street, Chicago, Illinois.

110 140. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

141. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XLII

142. Plaintiff, OTTO RESNAIS, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 134 Broadway, Melrose Park, Illinois.

143. Plaintiff here repeats and realleges as though fully

set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

144. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

111 B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XLIII

145. Plaintiff, MIKE SCHIAVONI, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3354 West Irving Park Road, Chicago, Illinois.

146. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

147. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C

of the prayer of Count II of this Second Amended Complaint.

COUNT XLIV

148. Plaintiff, UDELL SCHUMACHER, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3731 West Roosevelt Road, Chicago, Illinois.

149. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

150. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

112 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XLV

151. Plaintiff, ALBERT SECKER, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 115 North Oak Park, Oak Park, Illinois.

152. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

153. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of

the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

113 COUNT XLVI

154. Plaintiff, HARRY SHAYNE, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3454 Lawrence Avenue, Chicago, Illinois.

155. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

156. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XLVII

157. Plaintiff, PAUL SWARTZ, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3815 Lincoln Avenue, Chicago, Illinois.

158. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

159. Plaintiff here repeats and realleges as though fully

set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

114

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XLVIII

160. Plaintiff, JOE ARCABASCIO, is and has been since June 1, 1948 the operator of an independent shoe repair shop located at 4759 North Washtenaw, Chicago, Illinois.

161. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

162. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XLIX

163. Plaintiff, VICTOR TREVISANT, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 336 West 71st Street, Chicago, Illinois.

164. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

165. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT L

166. Plaintiff, CARLO VELTRI, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 2410½ 75th Street, Chicago, Illinois.

167. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

168. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorney's fee and its costs, as is provided in the Statute.

116 B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LI

169. Plaintiff, JOSEPH WALIK, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3645 West 22nd Street, Chicago, Illinois.

170. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

171. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants and that in addition there be allowed by the Court to plaintiff a reasonable attorney's fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained, paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LII

172. Plaintiff, OTTO WIEGAND, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 3741½ Southport Avenue, Chicago, Illinois.

173. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

174. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraph 24 of Count II of this Second Amended Complaint.

117 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defend-

ants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LIII

175. Plaintiff, TOM CECCOLA, is and has been since June, 1946, the operator of an independent shoe repair shop located in Chicago, Illinois.

176. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

177. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Court II of this Second Amended Complaint.

118 COUNT LIV

178. Plaintiff, LOUIS CARRARINI, during the period from January 1, 1945 to May, 1947 operated an independent shoe repair shop located at 3152 West 11th Street, Chicago Illinois. During the period from May 15, 1947 to the present time, plaintiff is and has been the operator of an independent shoe repair shop located at 10959 South Kedzie Avenue, Chicago, Illinois.

179. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

180. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LV

181. Plaintiff, EDWARD GAULKE, during the period from January 1, 1945 to March 22, 1952 operated an independent shoe repair shop located at 1625 West Madison Street. Plaintiff is and has been since March 22, 1952 the operator of an independent shoe repair shop located at 11053 South Hale Avenue, Chicago, Illinois.

182. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

119 183. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained, paragraphs B and C

of the prayer of Count II of this Second Amended Complaint.

COUNT LVI

184. Plaintiff, JOHN LOCHT, during the period from January 1, 1945, to September 20, 1947, operated an independent shoe repair shop located at 5215 West Irving Park Road, Chicago, Illinois. Plaintiff is and has been since March 21, 1949, the operator of an independent shoe repair shop located at 5105½ West Montrose, Chicago, Illinois.

185. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

186. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its
120 costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained, paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LVII

187. Plaintiff, ANTHONY LANDAZZI, during the period from January 1, 1945 to April 1, 1948 operated an independent shoe repair shop located at 79 West Van Buren Street, Chicago, Illinois. Plaintiff is and has been since April 1, 1948 the operator of an independent shoe repair shop located at 15 West Harrison Street, Chicago, Illinois.

188. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

189. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LVIII

190. Plaintiff, JOSEPH MALECKI, during the period from January 1, 1945 to July 1, 1949 operated an independent shoe repair shop located at 2409 North Central Park, Chicago, Illinois. Plaintiff is and has been since July 1, 1949 the operator of an independent shoe repair shop located at 3752 West Fullerton Avenue, Chicago, Illinois.

121 191. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

192. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LIX

193. Plaintiff, JOSEPH MORENO, during the period from January 1, 1945 to January 31, 1949 operated an independ-

ent shoe repair shop located at 3100 North Sheffield Avenue, Chicago. Plaintiff is and has been since February 1, 1949 the operator of an independent shoe repair shop at 3056 North Sheffield Avenue, Chicago, Illinois.

194. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

195. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

122

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LX

196. Plaintiff, CLIFFORD O'BEREN, during the period from January 1, 1945 to December 30, 1950 operated an independent shoe repair shop located at 1908 West Chicago Avenue, Chicago, Illinois. Plaintiff is and has been the operator of an independent shoe repair shop since January 2, 1951 at 1910 West Chicago Avenue, Chicago, Illinois.

197. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

198. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has

suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count LXI

199. Plaintiff, Leslie Rolando, during the period from January 1, 1945 to August 11, 1947 operated an inde-
123 pendent shoe repair shop located at Belmont and Central. Plaintiff is and has been the operator of an independent shoe repair shop since August 11, 1947 at 6652 North Clark Street, Chicago, Illinois.

200. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

201. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count LXII

202. Plaintiff, John Girlando, during the period from January 1, 1945 to December 31, 1946 operated an independent shoe repair shop located at 4009 Irving Park Road, Chicago, Illinois. Plaintiff is and has been the operator of an independent shoe repair shop since May 1, 1947 located at 3636 North Pulaski Road, Chicago, Illinois.

203. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

204. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

124 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXIII

205. Plaintiff, KONSTANI KEIL, during the period from January 1, 1945 to July 5, 1947 operated an independent shoe repair shop located at 2242 North Western, Chicago, Illinois. Plaintiff is and has been the operator of an independent shoe repair shop since July 6, 1947 located at 2316 North Western Avenue, Chicago, Illinois.

206. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

207. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

125 COUNT LXIV

208. Plaintiff, GROCE QUINTILIO, during the period from January 1, 1945 to December 31, 1945, operated an independent shoe repair shop located at 4835 North Damen Avenue, Chicago, Illinois. Plaintiff is and has been since April 1, 1950 the operator of an independent shoe repair shop located at 663 South Harlem Avenue, Forest Park, Illinois.

209. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

210. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXV

211. Plaintiff, JOEL SHABOZ, during the period from January 1, 1945 to January 31, 1945 operated an independent shoe repair shop at 3922 West North Avenue, Chicago, Illinois. Plaintiff is and has been since November 1, 1945, the operator of an independent shoe repair shop located at 3429 West North Avenue, Chicago, Illinois.

212. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

126 A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXVI

213. Plaintiff, JOSEPH SHALSY, during the period from January 1, 1945 to April 1, 1949 operated an independent shoe repair shop located at 3020 Armitage Avenue, Chicago, Illinois. Plaintiff is and has been since April 1, 1949, the operator of an independent shoe repair shop located at 2009 North California Avenue, Chicago, Illinois.

214. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

215. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

127 COUNT LXVII

216. Plaintiff, WILLIAM STAMOS, during the period from January 1, 1945 to December 31, 1947 operated an independ-

ent shoe repair shop located at 112 North Wells Street, Chicago, Illinois. Plaintiff is and has been the operator of an independent shoe repair shop since April 1, 1949 located at 5903 Irving Park Road, W. Chicago, Illinois.

217. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

218. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXVIII

219. Plaintiff, WILLIAM SUTY, during the period from January 1, 1945 to January 22, 1951 operated an independent shoe repair shop at 9048 South Commercial, Chicago, Illinois. Plaintiff is and has been the operator of an independent shoe repair shop since January 22, 1951 located at 2939 East 90th Street, Chicago, Illinois.

220. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

128 221. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has

suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXIX

222. Plaintiff, PAUL TEUBER, during the period from January 1, 1945 to December 31, 1946 operated an independent shoe repair shop located at 6348 North Oakley Avenue; during the period from December 31, 1946 to December 31, 1947 operated an independent shoe repair shop located at 5944 West Chicago Avenue, Chicago, Illinois. Plaintiff is and has been since January 1, 1948 the operator of an independent shoe repair shop located at 3838 West Fullerton Avenue, Chicago, Illinois.

223. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

224. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, or treble the damages which plaintiff has suffered as a result of the foregoing acts of the
129 defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXX

225. Plaintiff, FRANK VITALE, during the period from January 1, 1946 to April 15, 1948 operated an independent shoe repair shop located at 7021 North Clark Street, Chi-

cago, Illinois. Plaintiff is and has been since April 15, 1948 the operator of an independent shoe repair shop located at 3812 West Chicago Avenue, Chicago, Illinois.

226. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

227. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXI

228. Plaintiff, FRED VITALE, during the period from January 1, 1945 to July 1, 1947 operated an independent shoe repair shop located at 6971 North Clark Street, Chicago, Illinois. Plaintiff is and has been the operator
130 of an independent shoe repair shop since July 1, 1947 located at 7115 North Clark Street, Chicago, Illinois.

229. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

230. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defend-

ants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXII

231. Plaintiff, MARTIN F. WALZ, during the period from January 1, 1945 to March 1, 1949 operated an independent shoe repair shop located at 3042 North Cicero Avenue, Chicago, Illinois. Plaintiff is and has been since March 1, 1949 the operator of an independent shoe repair shop located at 3106 North Cicero Avenue, Chicago, Illinois.

232. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

233. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in
131 favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXIII

234. Plaintiff, RAY WARD, during the period from January 1, 1945 to June 15, 1946 operated an independent shoe repair shop located at 7673½ Coles Avenue, Chicago, Illinois. Plaintiff is and has been since June 15, 1946 the operator of an independent shoe repair shop at 8955 South Commercial Avenue, Chicago, Illinois.

235. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

236. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXIV

237. Plaintiff, JOSEPH F. SIENKIEWICZ, is and has been since June 1, 1946 the operator of an independent
132 shoe repair shop located at 7506 South Colfax Avenue, Chicago, Illinois.

238. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

239. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats nd incorporates, as though fully set out and herein contained paragraphs B and

C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXV

240. Plaintiff, GUST THEODORE, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 1209 Wilson Avenue, Chicago, Illinois.

241. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

242. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its
133 costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXVI

243. Plaintiff, NELS OLSON, is and has been since January 1, 1945 the operator of an independent shoe repair shop located at 3609 Broadway, Chicago, Illinois.

244. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

245. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defend-

ants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXVII

246. Plaintiff, JOSEPH CAVOTO, is and has been since January 1, 1945 the operator of an independent shoe repair store located at 6602 South Western Avenue, Chicago, Illinois.

247. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

248. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

134 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXVIII

249. Plaintiff, BRUCE GWYNN, is and has been since January 1, 1945 the operator of an independent shoe repair shop located at 1437 West Roosevelt Road, Chicago, Illinois.

250. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

251. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXIX

252. Plaintiff, CARMINE CRISTIANO, is and has been since January 1, 1945 the operator of an independent shoe
135 repair shop located at 6012 West North Avenue, Chicago, Illinois.

253. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

254. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXX

255. Plaintiff, FRANK SHEDLOCK, is and has been since May 15, 1948 the operator of an independent shoe repair shop located at 3432 Lincoln Avenue, Chicago, Illinois.

256. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

257. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgement may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its
136 costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXI

258. Plaintiff, CRIST NITCHOFF, is and has been since January 1, 1945 the operator of an independent shoe repair shop located at 7935 West 26th Street, Lyons, Illinois.

259. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

260. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C

of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXII

261. Plaintiff, CESAR VITALE, during the period from January 1, 1945 to December 31, 1946 operated an independent shoe repair shop located at 6906 North Clark Street, Chicago, Illinois. Plaintiff is and has been since December 1946 the operator of an independent shoe repair shop located at 6971 North Clark Street, Chicago, Illinois.

262. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

263. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXIII

264. Plaintiff, BEN VITALE, during the period from January 1, 1945 to June 1, 1947 operated an independent shoe repair shop located at 5562 Farragut Avenue, Chicago, Illinois. Plaintiff is and has been since June 1, 1947, the operator of an independent shoe repair shop located at 6348 North Oakley Avenue, Chicago, Illinois.

265. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

266. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its
138 costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXIV

267. Plaintiff, NICK PAPPAS, during the period from January 1, 1945 to December 31, 1946 operated an independent shoe repair shop located at 5903 Irving Park Road, Chicago, Illinois. Plaintiff is and has been since July 1, 1951, the operator of an independent shoe repair shop located at 182 North Cicero Avenue, Chicago, Illinois.

268. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

269. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXV

270. Plaintiff, JOE RAGUSA, during the period from January 1, 1945 to June 1, 1948 operated an independent shoe

repair shop located at 5254 West Chicago Avenue. During the period from June 1, 1948 to September 30, 1950 plaintiff operated an independent shoe repair shop located at 3421 West Fullerton Avenue, Chicago, Illinois. Since September 30, 1950 plaintiff is and has been the operator of an
139 independent shoe repair shop located in Jackson, Michigan.

271. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

272. Plaintiff here repeats and realleges as though fully

WHEREFORE, plaintiff prays that:

and each of them jointly and severally, and in favor of set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

A. A judgment may be entered against defendants the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXVI

273. Plaintiff, VETO PETRUSO, during the period from January 1, 1945 to December 31, 1950 operated an independent shoe repair shop located at 1350 Devon Avenue, Chicago, Illinois. Plaintiff since June 1, 1951 is and has been the operator of an independent shoe repair shop located at 130 South York Street, Elmhurst, Illinois.

274. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

275. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXVII

276. Plaintiff, JOHN MARCONI, during the period from January 1, 1945 to June 1 1949 operated an independent shoe repair shop located at 2945 West 63rd Street, Chicago, Illinois. Plaintiff is and has been since June 10, 1949 the operator of an independent shoe repair shop located at 3104 West 111th Street, Chicago, Illinois.

277. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

278. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fees and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXVIII

279. Plaintiff, JOSEPH ADDUCI, is and has been since Jan-

uary 1, 1945 the operator of an independent shoe repair shop located at 1411 West 69th Street, Chicago, Illinois.

280. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

281. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT LXXXIX

282. Plaintiff, ALEX PIECH, is and has been since January 1, 1945 the operator of an independent shoe repair shop located at 2114 West Belmont Ave, Chicago, Illinois.

283. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

284. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in
142 favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though

fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XC

285. Plaintiff, CHESTER MAJEWSKI, is and has been since April 12, 1947 the operator of an independent shoe repair shop located at 1747 West North Avenue, Chicago, Illinois.

286. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

287. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XCI

288. Plaintiff, FRANK MAGDALIN, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 4004 North Pulaski Road, Chicago, Illinois.

143 289. Plaintiff here repeats and realleges as though fully set out and herein contained paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

290. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of

the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff, here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XCII

291. Plaintiff, Issac Crape, is and has been since January 1, 1945 the operator of an independent shoe repair shop located at 3445 South Indiana Avenue, Chicago, Illinois.

292. Plaintiff here repeats and realleges as though fully set out and herein contained paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

293. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Court II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

144 B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XCIII

294. Plaintiff, C. De Matteo, is and has been since January 1, 1945 the operator of an independent shoe repair shop located at 7111 South Western Avenue, Chicago, Illinois.

295. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

296. Plaintiff here repeats and realleges as though fully

set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XCIV

297. Plaintiff, JOSEPH COHEN is and has been since January 1, 1945 the operator of an independent shoe repair shop at 6307 South Artesian Avenue, Chicago, Illinois.

298. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

299. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

145 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II and this Second Amended Complaint,

COUNT XCV

300. Plaintiff, JOSEPH PANZELLA, is and has been since January 1, 1945, the operator of an independent shoe repair shop located at 208 West 58th Street, Chicago, Illinois.

301. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

302. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XCVI

303. Plaintiff, JOHN STRINO, is and has been since
146 January 1, 1945 the operator of an independent shoe repair shop located at 512 East 71st Street, Chicago, Illinois.

304. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

305. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

Count XCVII

306. Plaintiff, William English, is and has been since March 1, 1947, the operator of an independent shoe repair shop located at 316 North Wastenaw Avenue, Chicago, Illinois.

307. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

308. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

147 B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

Count XCVIII

309. Plaintiff, Charles Hedin, is and has been since June 1, 1946 the operator of an independent shoe repair shop located at 3030 Broadway, Chicago, Illinois.

310. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

311. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

Wherefore, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has

suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT XCIX

312. Plaintiff, WILLIAM HENSEL, is and has been since May 1, 1947 the operator of an independent shoe repair shop located at 2509 West 63rd Street, Chicago, Illinois.

313. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

314. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

148 WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

COUNT C

315. Plaintiff, WILLIAM ROTHOUPT, during the period from January 1, 1945 to March 28, 1948 operated an independent shoe repair shop located at 5254 West Madison Street, Chicago, Illinois. Plaintiff is and has been since April 30, 1948 the operator of an independent shoe repair shop located at 2735 North Laramie Street, Chicago, Illinois.

316. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

317. Plaintiff here repeats and realleges as though fully set out and herein contained paragraph 24 of Count II of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs B and C of the prayer of Count II of this Second Amended Complaint.

149 COUNT CI

318. Plaintiff, EDWARD LUCHT, during the period from January 1, 1945 to December 15, 1951, operated an independent shoe repair shop located at 7020 West 16th Street, Berwyn, Illinois.

319. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraph B of the prayer of Count I of this Second Amended Complaint.

COUNT CII

320. Plaintiff, JOSEPH VARANO, during the period from January 1, 1945 to December 31, 1950 operated an independ-

ent shoe repair shop located at 8442½ South Ashland Avenue, Chicago, Illinois.

321. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as
150 though fully set out and herein contained paragraph B of the prayer of Count I of this Second Amended Complaint.

COUNT CIII

322. Plaintiff, NICHOLAS SUYLER, during the period from January 1, 1945 to December 31, 1950 operated an independent shoe repair shop located at 6410 North Mozart Street, Chicago, Illinois.

323. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraph B of the prayer of Count I of this Second Amended Complaint.

COUNT CIV

324. Plaintiff, GUNNAR JOHANAN, during the period from October 1, 1947 to June 30, 1950 operated an independent

shoe repair shop located at 3535 North Western Avenue, Chicago, Illinois.

325. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 21, inclusive, of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its
151-152 costs, as is provided in the Statute.

B. Plainfiff here repeats and incorporates, as though fully set out and herein contained paragraph B of the prayer of Count I of this Second Amended Complaint.

FRANCIS HEISLER,
One of the Attorneys for Plaintiffs.

FRANCIS HEISLER
PEARL BAER
RICHARD ORLIKOFF
Suite 648,
7 South Dearborn Street
Chicago 3, Illinois
STate 2-9266

April 9, 1952

153 **Exhibit "D" to Answer**

In the United District Court
Northern District of Illinois
Eastern Division

No. 50 C 229

Civil

WILLIAM ROHLFING, ET AL, PLAINTIFFS,

vs.

CAT'S PAW RUBBER CO., INC., ET AL, DEFENDANTS

ANSWER OF JACK KLINGER, d/b/a A. LEVETON CO. TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Now comes JACK KLINGER, d/b/a A. LEVETON CO., defendant herein, by I. LEONARD KOVITZ, his attorney, and for answer to the second amended complaint of the plaintiffs, states as follows:

1. Defendant states that each and every plaintiff named in the complaint, with the exception of UDELL SCHUMACHER a/k/a MAX SCHUMACHER, named in Count XLIV, and the plaintiff, GUST THEODORE, named in Count LLXV, are completely unknown to this defendant; that this defendant has had no business transactions with the aforesaid plaintiffs of any kind or nature, whatever, at any time, as alleged in said second amended complaint, has no knowledge or information concerning the matters alleged by all of the said plaintiffs, and accordingly, this defendant denies each and every allegation made in each and every Count by each of the plaintiffs in said second amended complaint, with the exception of the plaintiffs, UDELL SCHUMACHER a/k/a MAX SCHUMACHER and GUST THEODORE, hereinbefore mentioned. Defendant further states that the relief prayed for by all of the plaintiffs should be denied as to this defendant, and that this defendant should be dismissed as to all of the Counts hereinbefore mentioned, and that costs be taxes against the said plaintiffs.

2. With respect to the plaintiffs UDEL SCHUMACHER a/k/a MAX SCHUMACHER and GUST THEODORE, the defendant answers as follows:

ANSWER TO COUNT XLIV

3. In answer to Count XLIV, with respect to plaintiff, UDELL SCHUMACHER a/k/a MAX SCHUMACHER, defendant admits the allegations contained in Paragraph 148.

4. In answer to Paragraph 149, defendant answers 154 Paragraph 2 to 21, thereof, inclusive, of Count I, as follows:

5. In answer to Paragraph 2, defendant states that he has insufficient knowledge or information with respect to the business conducted by the plaintiff, and accordingly, denies the allegations contained in Paragraph 2.

6. In answer to Paragraph 3, defendant denies that this action arises under the sections of the statutes contained in said paragraph, and this defendant further denies any violation of any of the acts or statutes specified in said Paragraph 3.

7. In answer to Paragraph 4, defendant has no knowledge or information with respect to the allegations contained in said paragraph, and for further answer to said Paragraph 4, defendant states that the allegations contained in said paragraph refer to rubl manufacturers, and accordingly, the defendant denies the allegations in said paragraph.

8. In answer to Paragraph 5, defendant states that the allegations contained in said paragraph refer to manufacturers of leather goods, and not to this defendant, and that this defendant has insufficient information or knowledge with respect to said allegations, and accordingly, denies the allegations contained in Paragraph 5.

9. In answer to Paragraph 6, the allegations contained in said paragraph refer to manufacturers of shoe polish, and not to this defendant, and for further answer, this defendant states that he has insufficient knowledge or information with respect to the allegations contained in said paragraph, and accordingly denies said allegations.

10. In answer to Paragraph 7, the defendants named in this paragraph are owners or operators of chain stores or department stores, and not this defendant, and for further answer, this defendant states that he has insufficient knowledge or information to answer the allegations concerning these defendants, and accordingly this defendant denies all of the allegations contained in Paragraph 7.

11. In answer to Paragraph 8, this defendant admits that up to and including September 1, 1950, he was a wholesaler or jobber of shoe materials and supplies, and was commonly known in the shoe trade as a "finder". For further answer to the allegations contained in said paragraph 8, this
155 defendant admits that he purchased shoe repair supplies from various manufacturers for the purpose of resale. For further answer to the allegations contained in said Paragraph 8, this defendant denies that he is known as a "preferred finder."

12. In answer to Paragraph 9, defendant has insufficient knowledge or information with respect to the allegations contained in said paragraph, and accordingly, denies each and every allegation contained therein.

13. In answer to Paragraph 10, defendant states that he has insufficient knowledge or information with reference to the allegations contained in said paragraph, and accordingly denies each and every allegation contained therein.

14. In answer to Paragraph 11, this defendant states that he has insufficient knowledge or information with respect to the allegations contained in said paragraph, and accordingly, the defendant denies the allegations contained in said paragraph.

15. In answer to Paragraph 12, this defendant denies the allegations contained in said paragraph.

16. In answer to Paragraph 13, this defendant states that he has insufficient information or knowledge, with respect to the practices of the defendant manufacturers in selling and distributing their products, and accordingly this defendant denies the allegation contained in said paragraph, with reference to said defendants. For further answer to Paragraph 13, this defendant denies that any payment for orders filled by this defendant to retailers were made directly to any manufacturers, and this defendant further denies that any manufacturer filled orders on behalf of this defendant without first obtaining orders from this defendant. For further answer, this defendant denies that payments made on sales made by this defendant were made to the manufacturer, but states that payments on all shipments from this defendant to his customers were made to this defendant.

17. In answer to Paragraph 14, defendant denies each

and every allegation contained in said paragraph. For further answer to said paragraph, defendant denies that he has been guilty of violation of the Anti-Trust Laws, in any manner or form, and specifically denies all of the allegations contained in sub-paragraphs a, b, c and d of said Paragraph 14.

156 18. In answer to Paragraph 15, defendant denies all the allegations contained in said paragraph.

19. In answer to Paragraph 16, this defendant denies each and every allegation contained in said paragraph, with respect to this defendant.

20. In answer to Paragraph 17, defendant denies that larger discounts and rebates were granted by this defendant to the defendant chain or department stores on purchase of shoe supplies of the same grade and quality as that purchased from this defendant by independent shoe repair stores, that were not justified by savings in the cost of sale or delivery. All other allegations contained in Paragraph 17 are specifically denied by this defendant.

21. In answer to Paragraph 18, defendant denies each and every allegation contained therein.

22. In answer to Paragraph 19, defendant denies each and every allegation contained therein.

23. In answer to Paragraph 20, defendant denies the allegations contained in said paragraph with respect to this defendant, and for further answer to said paragraph, denies that this defendant was guilty of any illegal rebates or discounts as alleged in said paragraph.

24. In answer to Paragraph 21, defendant denies each and every allegation contained therein, and denies that plaintiff is entitled to any of the relief requested by him. For further answer to the allegations contained in said Paragraph 21, defendant states that he is no longer engaged in the shoe "finder" business, and that he sold the entire business commonly known as A. Leveton Co. under date of September 1, 1950, and that from and after that date, he has ceased entirely to be engaged in said business or in any other business of a similar nature.

25. In answer to Paragraph 24 of Count 2, this defendant denies each and every allegation contained in said paragraph; denies the violation of any statute or acts of Congress as alleged by the plaintiff; denies that the plaintiff is

entitled to injunctive relief or any other relief, as requested in said paragraph. For further answer, defendant states that he has ceased operations as a shoe "finder" and that he sold his entire interest in the business commonly known as A. Leveton Co. under date of September 1, 1950.

157-159 26. As a further and special defense, defendant alleges that the complaint fails to state a cause of action against this defendant, and accordingtly the complaint should be dismissed as to this defendant.

27. As a further, special and alternative defense, defendant states that all of the alleged transactions which occured more than two (2) years prior to the filing of this suit, are barred by the Statute of Limitations, and accordingly all causes of action as to said period of time, should be stricken and this cause dismissed as to this defendant

Wherefore, defendant prays that this cause be dismissed, and that costs be taxed against the plaintiff.

Answer To Count LXXV As To Plaintiff, Gust Theodore

28. In answer to Paragraph 240, defendant admits the allegations contained therein.

29. In answer to Paragraphs 241 and 242, defendant here repeats and realleges, as though fully set out and herein contained, Paragraphs 3 to 27 inclusive of the Answer to Count XLIV, pertaining to Udel Schumacher a/k/a Max Schumacher.

30. For further answer to Paragraph 242, defendant denies that the plaintiff is entitled to the relief prayed for, and denies that plaintiff is entitled to any relief whatever, and prays that this cause be dismissed, and that costs be assessed against the plaintiff.

I. Leonard Kovitz,
Attorney for defendant, Jack Klinger, d/b/a A. Leveton Co.

I. Leonard Kovitz
Suite 802
100 W. Monroe St.
Chicago 3, Illinois
Andover 3-6537 or Dearborn 2-5175-4

Affidavit of Service (Omitted in Printing)

160 **Exhibit "E" to Answer**

In the United States District Court
for the Northern District of Illinois
Eastern Division

No. 50 C 229

Civil Action

WILLIAM ROHLFING, ET AL., PLAINTIFFS,

vs.

CAT'S PAW RUBBER COMPANY, INC., ET AL, DEFENDANTS

ANSWER OF GOLDBLATT BROS., INC., TO PLAINTIFFS' SECOND AMENDED COMPLAINT—FILED SEPT. 12, 1952

GOLDBLATT BROS., INC., one of the defendants herein, by its attorneys STANFORD CLINTON and JAY A. PRITZKER, for answer to the Second Amended Complaint filed herein, states as follows:

COUNT I

1. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 1 and therefore denies the same.

2. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 2 and therefore denies the same.

3. Answering paragraph 3, this defendant denies that said complaint states a claim upon which relief can be granted under any or all of the statutes set forth in said paragraph 3, and further denies that it has committed any acts which would give rise to any action against it under any or all of said statutes.

4. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 4 and therefore denies the same.

161 5. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 5 and therefore denies the same.

6. This defendant has no knowledge or information suf-

ficient to form a belief as to the truth of the matters alleged in paragraph 6 and therefore denies the same.

7. Answering paragraph 7, this defendant admits that it is the owner and operator of a chain of department stores in and about the City of Chicago and environs, in some of which stores shoe repair services are offered to the public. This defendant denies that it is engaged in the sale of retail merchandise appertaining to shoe services except as stated hereafter. This defendant admits that it has purchased merchandise that may have been manufactured by certain of the defendant manufacturers described in paragraphs 4, 5 and 6 of the Second Amended Complaint, but denies that, at any time during the period of two years prior to the commencement of this action, it purchased any such merchandise directly from said defendant manufacturers. This defendant admits that its name is Goldblatt Bros, Inc., its principal place of business is 333 South State Street, Chicago 4, Illinois, and that it is incorporated in the State of Illinois. This defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations with respect to the other defendants named in paragraph 7, and therefore denies the same.

8. Answering paragraph 8, this defendant admits that within the period of two years prior to the commencement of this action it purchased certain shoe supplies from the defendants Jack Klinger, d/b/a A. Leviton & Co. and K. Kaplan Sons Co., and a very small amount of shoe laces from the defendant Rudolph E. Kaplan, Eli Kaplan, J. Gilbert Kaplan, Ruben Chupak, d/b/a Reick-Langendorf Company; which it sells over the counter in its notions department. As to the other matters alleged in paragraph 8, this defendant has no knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

162 9. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 9, and therefore denies the same.

10. Answering paragraph 10, this defendant admits that within the period of two years prior to the commencement of this action it has purchased shoe polish directly from the defendant Griffin Mfg. Co., which it has sold over the counter in its notions department, and also that it has purchased

merchandise that may have been manufactured by certain of the defendant manufacturers from the defendants listed in paragraph 8 of the Second Amended Complaint. With respect to the other matters alleged in paragraph 10, this defendant has no knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

11. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 11, and therefore denies the same.

12. Answering paragraph 12, this defendant admits that in some of its department stores shoe repair services are supplied and some shoe supplies are sold in the notions department, to the consumers in Chicago and environs. With respect to the other allegations of paragraph 12, this defendant has no knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

13. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 13, and therefore denies the same.

14. Answering paragraph 14, this defendant denies that it has contracted, combined or conspired with any other defendant named herein, or with any other persons or corporations whatsoever, to monopolize or to attempt to monopolize the sale of shoe repair supplies or other merchandise pertaining to shoe repair service in the City of Chicago, or in adjoining areas, and further denies that it combined or conspired to suppress competition in the sale of shoe supplies in interstate trade and commerce, in violation of the provisions of the Acts referred to in the Second Amended Complaint, or of any other law of the United States or of any state thereof. This defendant has no knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 14, and therefore denies the same

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15 Answering paragraph 15, this defendant denies that it was or is a party to any combination and conspiracy as alleged. This defendant has no knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 15, and therefore denies the same

16. Answering paragraph 16, this defendant denies that it knowingly received any unreasonable, arbitrary, and il-

legal rebates or discounts from any defendant manufacturer or defendant finder named in said paragraph. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 16 in so far as they pertain to the other defendants and therefore denies the same.

17. This defendant denies the allegations of paragraph 17 in so far as they relate to this defendant. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 17 in so far as they relate to the other defendants and therefore denies the same.

18. This defendant denies the allegations of paragraph 18 in so far as they relate to this defendant. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 18 in so far as they relate to the other defendants and therefore denies the same.

19. Answering paragraph 19, this defendant denies that it has violated, or has been a party to any combination or conspiracy to violate the anti-trust laws, and denies each and every other allegation contained in paragraph 19.

20. This defendant denies each and every allegation contained in paragraph 20 in so far as they relate to this defendant. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 20 in so far as they relate to the other defendants and therefore denies the same.

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21. This defendant denies the allegations of paragraph 21, and denies that the plaintiff is entitled to any of the relief sought, or any part thereof.

WHEREFORE, this defendant prays that Count I of the Second Amended Complaint be dismissed at plaintiffs' costs.

COUNT II

22. This defendant has no knowledge or information sufficient to form a belief as to the truth of the matters alleged in paragraph 22 and therefore denies the same.

23. Answering paragraph 23, this defendant repeats and re-alleges and hereby incorporates by reference, its answers, denials, statements and admissions contained in paragraphs 2 to 21, inclusive, of this Answer to the same effect as if they had been fully set forth herein.

24: This defendant denies the allegations of paragraph 24, and denies that plaintiff is entitled to any of the relief sought, or any part thereof.

WHEREFORE, this defendant prays that Count II of the Second Amended Complaint be dismissed at plaintiffs' costs.

COUNTS III TO CXIV, INCLUSIVE

25. Answering paragraphs 25 to 325, inclusive, this defendant repeats and realleges and hereby incorporates by reference, its answers, denials, statements and admissions with respect to the three paragraphs of each of Counts III to CXIV, inclusive, as are contained in paragraphs 1 to 23, inclusive, of Count I and paragraph 24 of Count II of this Answer.

WHEREFORE, this defendant prays that Counts III to CXIV, inclusive, of the Second Amended Complaint be dismissed at plaintiffs' costs.

165 FIRST SEPARATE DEFENSE

The Second Amended Complaint, and each and every Count thereof, fails to state a claim against this defendant upon which relief can be granted.

SECOND SEPARATE DEFENSE

This defendant alleges that all claims asserted by the plaintiff named in each Count of the Second Amended Complaint which occurred more than two years prior to the date said plaintiff commenced this proceeding or subsequently became a party plaintiff herein, as the case may be, are barred by virtue of the applicable Statute of Limitations (Illinois Revised Statutes 1951, Chapter 83, Section 15).

STANFORD CLINTON
JAY A. PRITZKER
Attorneys for Goldblatt Bros., Inc., Defendant

PRITZKER, PRITZKER & CLINTON
134 North LaSalle Street
Chicago 2, Illinois
DEarborn 2-0525
Of Counsel.

166-168 NOTICE OF FILING (Omitted in Printing)

169 **Exhibit "F" to Answer**

United States District Court
for the Northern District of Illinois
Eastern Division

No. 50 C 229

WILLIAM ROHLFING, ET AL, PLAINTIFFS,

vs.

CAT'S PAW RUBBER CO., INC., ET AL, DEFENDANTS

ANSWER OF DEFENDANT, GRIFFIN MANUFACTURING CO., TO SECOND AMENDED COMPLAINT—Filed September 12, 1952

NOW comes GRIFFIN MANUFACTURING CO., a corporation, one of the defendants herein, by its attorneys, H. Templeton Brown and Edmund A. Stephan, and for its answer to the Second Amended Complaint filed by the plaintiffs herein alleges as follows:

AS TO COUNT I

First Defense

1. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1.

2. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 2.

3. Paragraph 3 alleges only conclusions of law and this defendant is not required to plead thereto.

4. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth
170 of the averments contained in paragraph 4.

5. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 5.

6. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 6, except that it admits

that the defendants named in said paragraph are manufacturers of shoe polish commonly used in the shoe repair trade, admits that it ships and distributes shoe polish manufactured by it throughout various parts of the United States, including Illinois, admits that the manufacture and distribution of shoe polish is done directly by it, denies that the manufacture, transportation and distribution of shoe polish is done through subsidiary or associated companies, denies that its trade name is "Griffin Mfg. Co.", admits that the address of its principal office is 410-424 Willoughby Avenue, Brooklyn 5, New York, and admits that it is incorporated under the laws of the State of New York.

7. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7, admits that the defendants, Sears Roebuck & Co. and Goldblatt Bros., Inc., purchase merchandise from this defendant, and denies that any of the other defendants named in said paragraph purchase merchandise from this defendant.

8. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8, except that it admits that
171 the defendants named in said paragraph are wholesalers or jobbers of shoe materials and supplies and are commonly known in the shoe trade as "finders" and that said defendants from time to time purchase merchandise from this defendant and sell and distribute the same to various department stores, chain stores and other retail stores in the United States.

9. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, except that it admits that it manufactures shoe polish in a state other than Illinois and that such shoe polish is shipped across state lines in order to be distributed in Illinois.

10. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, except that this defendant admits that products manufactured by it are sold and distributed to various wholesalers throughout the United States, including the defendant finders, and to various chain stores, throughout the United States including, among the

defendants, only Sears Roebuck & Co. and Goldblatt Bros., Inc., and except that defendant denies that it distributes its products to independent shoe repair stores throughout the United States and denies that it distributes its products to department stores except such as operate at least five units and maintain warehousing facilities.

11. This defendant denies that it occupies a monopolistic position in the manufacture and distribution of shoe polish or any other product in the United States and denies
172 that any monopolistic position enables it to monopolize and to restrain trade in shoe polish or any other product in Chicago, Illinois, and with respect to all other averments of paragraph 11 defendant states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

12. This defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12.

13. Defendant denies that during the period from January 1, 1945 to the time of the filing of this action that it distributed shoe supplies in Chicago in the manner stated in paragraph 13 of said complaint; denies that it employed salesmen who called upon retail shoe service stores for the purpose of selling to them products manufactured by the defendant; denies that it filled orders from retail shoe service stores either by delivering the ordered supplies directly to the retailer or by placing the order with a "finder" for delivery to the retailer; denies that payment for any such order was made by the retailer either directly to this defendant or that payment was made to the finder who was designated by this defendant at the time the order was placed, and denies that in the latter case the finder then made payment to this defendant for such shipment after deducting from the sales price a "finder's commission". Further answering the averments of said paragraph, defendant states that its salesmen from time to time call on retail shoe service stores; that any so-called "missionary work" carried on by such salesmen consists of an attempt to induce such stores to place orders for their defendant's products with wholesalers designated by such stores; that such
173 orders are shipped and billed to such stores exclusively by said wholesalers and not by this defendant.

14. This defendant denies the averments of paragraph 14 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

15. This defendant denies that it was a party to, or participated in, any contract, combination or conspiracy as set forth in paragraph 14 of the complaint, and with respect to the remaining allegations of said paragraph defendant states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

16. This defendant denies that it granted to the defendant chain or department stores unreasonable, arbitrary and illegal rebates and discounts as set forth in paragraph 15 of said complaint in violation of the Robinson-Patman Act, 15 U.S.C. §§ 12-27; with respect to the remaining allegations of said paragraph defendant states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

17. This defendant denies the allegations of paragraph 17 insofar as they relate to it and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

18. This defendant denies the allegations of paragraph 18 insofar as they relate to it and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

174 19. This defendant denies the allegations of paragraph 19 insofar as they relate to this defendant and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

20. This defendant denies the allegations of paragraph 20 insofar as they relate to this defendant and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

21. This defendant denies that it has violated any antitrust law in respect of any of the plaintiffs and denies that the violations of the antitrust laws alleged in said complaint, insofar as they are attributed to this defendant have continued, and denies that they have caused further any great

injury to the plaintiffs; and defendant states that the remaining averments of paragraph 21 are not allegations of fact and do not require an answer.

Second Defense

22. The complaint fails to state a claim upon which relief can be granted.

Third Defense

23. This action was not commenced within two years next after the claims and causes of action alleged in Count I accrued.

WHEREFORE, having answered Count I of the Second Amended Complaint this defendant prays that the
175 Court dismiss said Count and render its judgment for this defendant and award to it its costs.

AS TO COUNT II

24. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 22.

25. Answering the averments of paragraph 23 of said complaint, defendant repeats and realleges, as if fully set forth herein, the answers, denials, statements, averments and defenses set forth in paragraphs 2 to 23, inclusive, of this Answer.

26. This defendant denies the averments of paragraph 24 of said complaint insofar as they relate to it, and, insofar as they relate to other defendants, states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

WHEREFORE, having answered Count II of said Second Amended Complaint, this defendant prays that judgment be entered dismissing said Count and awarding this defendant its costs.

AS TO COUNTS III TO CIV, INCLUSIVE

27. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the first paragraph of each of said Counts.

28. Answering the averments of the second paragraph of each of said Counts, defendant repeats and realleges, as if fully set forth herein, the answers, denials, state-
176-177 ments, averments and defenses set forth in paragraphs 2 to 23, inclusive, of this Answer.

29. Answering the third paragraph of each of said Counts, this defendant repeats and realleges, as if fully set forth herein, each of the denials and averments set forth in paragraph 26 of this Answer.

WHEREFORE, having answered each of said Counts III to CIV, inclusive, defendant prays that judgment be entered dismissing each of said Counts and awarding this defendant its costs.

H. TEMPLETON BROWN
EDMUND A. STEPHAN
Attorneys for Defendant,
Griffin Manufacturing Co.

MAYER, MEYER, AUSTRIAN & PLATT
of Counsel
231 S. LaSalle Street
Chicago 4, Illinois
STate 2-0600

Date	Grade		Price Per Lb.
Boyne City Dry Foot Finders Strips			
Apr. 16	Fine 13"	10-12	.72
May 29	Prime 13"	"	.85
Sept. 25	Fine 13"	"	.75
Nov. 3	Prime 13"	"	.85
208			
Aug. 10, 1949	Prime 13"	12 iron up	.90
Nov. 11	Prime 13"	"	.90
11	Prime 13"	10-12 iron	.90
May 1, 1950	Prime 13"	"	.85

Date	Grade		Price Per Doz. Prs.
Amo Flex Taps			
May 23, 1951	Fine 4	Regular	4.30
Howes Oak Angle Taps			
Dec. 1, 1949	Prime 6	Regular	6.00
Jan. 10, 1950	Prime 6	"	6.00
10	Prime 5	"	5.50
13	Prime 5½	"	5.50
13	Prime 6	"	6.00
July 21	Prime 5½	"	5.50
Aug. 18	Prime 5½	"	5.50
Sept. 18	Prime 5½	"	5.50
Rock Oak Angle Taps			
July 31, 1951	Prime 5½	Regular	7.25
Aug. 14	Prime 6	"	7.25
14	Prime 5½	"	7.00
14	Fine 5½	"	6.50
14	Prime 6	Large	8.85
14	Prime 5½	"	8.50
Sept. 27	Prime 5½	"	8.25
209			

Date	Grade	Price Per Lb.
Reject Angle Taps		
Sept. 1, 1948		$ .38
14		.38
Oct. 13		.36
14		.36
Dec. 10		.36
Sept. 14		.38
Jan. 14, 1949		.30
July 22		.20
July 7, 1950		.20
Aug. 9		.25
Nov. 14, 1952		.24

Date	Grade		Price Per Doz. Prs.
Rock Oak Taps			
Nov. 2, 1951	Prime 5½	Large	8.25
Apr. 14, 1952	Prime 7	"	6.50
16	Prime 5½	"	5.75
16	Prime 6	"	6.00
Aug. 21	Prime 6	"	6.00
Oct. 9	Prime 5½	"	5.75

178 **Exhibit "G" to Answer**

In the United States District Court, Northern District of Illinois, Eastern Division

No. 50 C 229

WILLIAM ROHLFING, ET AL, PLAINTIFFS

v.

CAT'S PAW RUBBER CO., INC., ET AL, DEFENDANTS

FURTHER ANSWERS OF HOWES LEATHER COMPANY, INC. TO INTERROGATORIES WHICH WERE PROPOUNDED TO IT UNDER RULE 33—Filed June 29, 1954

3A 1. The items manufactured by the defendant from July 15, 1947 to December 31, 1952 used in the repairing or reconditioning of shoes and their trade names (all of which were manufactured in defendant's plants at Boyne City, Michigan, Boston, Massachusetts, Columbus, Indiana, and Mount Jewett, Pennsylvania) are as follows:

	Items				
Trade Name*	Taps	Strips	Bends	Soles	Offal
Boyne City Dry Foot	—	—	—	—	
Boyne City Flexible	—	—	—	—	
Mooney Flexible	—	—	—	—	
Mooney French Finish	—	—	—	—	
Howes Oak	—	—	—	—	
Howes Oak Flexible	—	—	—	—	
Rock-Oak	—	—	—	—	
Amo-Flex	—	—	—	—	
All-American	—	—	—		

* Some items sold are not trade marked.

179 2. The pounds of each item manufactured for such use during such period of time were:

Taps	19,210,483 Lbs.
Strips	2,100,923 "
Offal	6,228,450 "
Bends	776,956 "
Soles	779,766 "
	29,096,578 "

3B The percentage of the total production of each item for each of the defendants during the period July 15, 1947 to December 31, 1952 is as follows:

Date	Grade		Price Per Doz. Prs.
	Amoflex Taps		
Aug. 21, 1952	Prime 6	Regular	5.00
Sept. 11	Prime 6	"	5.00
23	Prime 5½	"	4.75
23	Prime 6	"	5.00
Oct. 29	Prime 5½	"	4.75
29	Prime 6	"	5.00
Nov. 3	Prime 6	"	5.00
3	Prime 5½	"	4.75
10	Prime 6	"	5.00
10	Prime 5½	"	4.75

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Date	Grade	Price Per Lb.
	Finders Bends	
Dec. 12, 1947	Prime Extra Heavy	$0.90
Sept. 20, 1948	Prime Extra Heavy	.85
Apr. 21	Prime Heavy	.80
Aug. 16, 1949	Prime Heavy	.72

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Date	Grade	Price Per Lb.
	Heavy Finders Strips	
Nov. 19, 1947	Fine 13"	.90
19	Prime 13"	.95
Aug. 10, 1948	SB 13"	.95
Sept. 1	SB 13"	.95
Oct. 6	SB 13"	.95
Jan. 14, 1949	Prime 13"	1.05
14	Toplift 3½–4½"	.60
20	Prime 13"	1.05
Feb. 1	Fine 13"	.95
4	Fine 13"	.95
June 29	Prime 13"	.90
July 28	Prime 13"	.90
July 31, 1951	Toplift 3½–4½"	.72
Sept. 13	Toplift 3½–4½"	.72
May 29, 1952	Toplift 3½–4½"	.55
Feb. 22	Toplift 3½–4½"	.58
	Howes Oak Strips	
Jan. 31, 1950	Prime 13"	.80
31	Prime 13" Extra Heavy	.80
Feb. 3	Prime 13"	.80
3	Prime 13" Extra Heavy	.80
Feb. 7	Prime 13"	.80
7	Prime 13" Extra Heavy	.80
	Amoflex Strips	
June 6, 1952	Prime 13"	.80
13	Prime 13"	.80
	Mooney Heavy Strips	
July 24, 1950	SB Prime 13"	.80

	Taps	Strips	Bends	Soles	Offal
A. Leveton Company	47%	22%		03%	02%
K. Kaplan Son & Co.	94	1 34	18%	82	26
Sears, Roebuck & Co.	01	60			
Public Shoe Service Corporation (Including Hub Leather and Findings Corporation)	2 19	29		3 29	98

17. No. There is the usual trade discount to all customers. During the period from July 15, 1947 to December 31, 1952 all customers were granted 1%—thirty days on taps and strips; 2%—thirty days, 1%—sixty days on bends and offal; 1%—thirty days on soles packaged to the dozen and 2%—thirty days on unpackaged soles.

180 *19.* The prices charged by this defendant to other defendants for items of findings during the period July 15, 1947 to December 31, 1952 were as follows:

A. Leveton Company

Taps.

Date	Grade		Price Per Doz. Prs.
	Mooney Right and Left Flexible Taps		
Apr. 12, 1949	Prime 5½	Regular	$6.60
12	Prime 6	"	7.25
18	Prime 5½	"	6.60
18	Prime 6	"	7.25
June 8	Prime 5½	"	6.60
8	Prime 6	"	7.25
13	Prime 5½	"	6.60
13	Prime 6	"	7.25
Oct. 25	Prime 5½	Large	8.00
25	Fine 5½	"	7.00
25	SB 5½	"	6.00
Apr. 28, 1950	Prime 5½	Regular	6.50
July 20	Prime 6	"	7.00
20	Prime 6½	"	7.25
20	Fine 5½	"	5.75
20	Fine 6½	"	6.25
June 13, 1951	Prime 6	"	8.50
Dec. 20	Prime 5½	"	6.25
20	Prime 6	"	6.50
June 13	Fine 5½	"	8.00
13	Fine 6	"	8.00
13	Fine 5	"	7.00
Nov. 9	Fine 5½	"	7.00
9	SB 4	"	4.25

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Aug. 20, 1952	Fine 6	Regular	$5.25
20	Fine 6	Large	6.25
	Boyne City Flexible Taps		
May 18, 1948	Prime 5½	Regular	7.00
July 16	Prime 5½	"	7.00
Oct. 7	Prime 5½	"	7.25

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Public Shoe Service Corporation
(Including Hub Leather and Findings Corporation)

Date	Grade	Price Per Doz. Prs.
Mooney Right & Left Men's Flexible Taps		
Mar. 24, 1948	SB 4½	Regular 4.00
Apr. 14	SB 4½	" 4.00
16	SB 4½	" 4.00
21	SB 4½	" 4.00
[redacted]	SB 4½	" 4.00
Sept. 29, 1949	Fine 5	" 4.75
Dec. 16	Fine 4½	" 3.00
16	SB 4½	" 2.75
16	SB 4	" 2.75
Mar. 16, 1950	Fine 5	" 4.50
Oct. 16	SB 4	" 3.25
Nov. 30	SB 4	" 3.25
Oct. 4, 1951	Fine 5	" 5.75
July 3, 1952	SB 4½	" 3.25
3	SB 4	" 3.25
Oct. 22	#1 5	" 3.75
All American Angle Taps		
Dec. 10, 1948	B 4½	Regular 2.25
Jan. 17, 1949	B 4½	" 2.25

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Taps

Boyne City Dry Foot Angle Taps

Sept. 17, 1947	Prime 5	Regular 5.75
Oct. 8	Prime 5	" 5.75
Nov. 19	Prime 5	" 5.75
Sept. 17	Fine 5	" 5.25
17	Fine 5½	" 5.75
17	Fine 6	" 6.50
Oct. 8	Fine 6	" 6.50
8	Fine 5½	" 5.75
Nov. 19	Fine 5½	" 5.75
19	Fine 6	" 6.50
Nov. 4	SB 5	Large 5.75
Dec. 4	SB 5	" 5.75
Sept. 17	#1 4½	Regular 3.75
17	#1 5	" 4.50
17	#1 4½	Large 4.50
Jan. 6, 1948	Prime 5	Regular 5.75
June 16	Prime 5	" 5.75
16	Prime 5	" 6.50
July 7	Prime 5	" 6.50
Aug. 25	Prime 5	" 6.50
Oct. 12	Prime 5	" 6.50
June 2	Fine 6	" 7.00
8	Fine 6	" 7.00

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July 7, 1948	Fine 5½	Regular 6.50
7	Fine 5	" 6.00
10	Fine 5	" 6.00
10	Fine 5½	Large 8.00
10	Fine 5½	Regular 6.50
Aug. 25	Fine 5½	" 6.50
Oct. 12	Fine 5	" 6.00
12	Fine 5½	" 6.50

A. Leveton Company

Taps

Date	Grade		Price Per Doz. Prs.
Mooney Right and Left Flexible Taps			
Aug. 31, 1949	Prime 6	Regular	$7.00
Feb. 13, 1950	Prime 5½	"	6.50
" 27	Prime 5½	"	6.50
June 13, 1951	Prime 5½	"	8.40
Feb. 20, 1952	Prime 5½	"	6.50
" 20	Prime 5	"	5.50
May 6	Prime 5½	"	5.75
" 21	Prime 6	"	6.25
" 21	Prime 5½	Large	7.00
June 9	Prime 6	"	7.00
" 19	Prime 5½	Regular	6.00
July 16	Prime 5½	Large	7.00
Aug. 25	Prime 6	"	7.25
May 9	Fine 5½	Regular	4.75
July 13, 1951	A Fine 5	"	4.90
Aug. 24, 1950	SB 4	"	3.00
Sept. 15	SB 4	"	3.00
Nov. 10	SB 4	"	3.00

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Boyne City Dry Foot Angle Taps

Sept. 6, 1947	Prime 5½	Regular	6.00
" 6	Fine 5½	"	5.50
" 24	Prime 5½	"	3.75
" 24	Prime 5	"	6.00
" 24	Prime 6	"	7.40
" 24	Fine 5½	"	6.00
" 24	Fine 5	"	5.50
" 24	Fine 6	"	6.65
" 24	B 5½	"	4.50
" 24	Special 5	"	3.50
" 24	Special 5½	"	4.25
" 24	#1 5	"	4.50
" 2	B 5½	"	4.00
" 2	B 6	"	4.50
" 2	#1 5½	"	5.00
Oct. 15	Prime 5½	"	6.00
" 15	Prime 5½	"	6.75
" 15	Fine 5½	"	5.50
" 15	Fine 5½	"	6.00
Nov. 12	SB 5	"	4.50
" 12	SB 6	"	6.50

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Mar. 5, 1948	Prime 5½	"	7.00
" 5	Fine 6	"	7.00
" 5	SB 6	"	6.25
" 5	SB 5½	"	5.50
" 5	SB 5	"	4.40
Apr. 9	SB 5	"	4.00
" 9	SB 5½	"	5.00
" 21	Fine 6	"	6.80
May 17	SB 5½	"	5.00
July 14	SB 5½	"	5.00
" 14	SB 5	"	4.00
Aug. 21	Prime 5½	Large	8.50
" 21	Prime 6½	"	9.75

Date	Grade		Price Per Doz. Prs.
	Boyne City Dry Foot Angle Taps		
Nov. 10	Fine 5	"	6.00
Apr. 1	Fine 5	Large	5.50
Jan. 6	SB 5	Regular	4.50
6	SB 6	Large	8.00
14	SB 6	"	8.00
Feb. 5	SB 6	"	8.00
Mar. 12	SB 5	"	5.50
Apr. 1	SB 5	"	5.50
1	SB 5½	"	5.50
3	SB 5	Regular	3.85
3	SB 5	Large	5.50
3	SB 4½	Regular	3.00
May 6	SB 5½	Large	5.50
21	SB 5	"	5.50
24	SB 5	"	5.50
June 9	SB 5	"	5.50
215			
July 1, 1948	SB 4½	Regular	3.00
7	SB 5½	Large	7.00
10	SB 6	"	7.40
19	SB 5	"	5.50
23	SB 5	"	5.50
28	SB 5	"	5.50
Aug. 4	SB 5	"	5.50
5	SB 5	"	5.50
25	SB 5	"	5.50
Sept. 24	SB 6	"	7.40
24	SB 5	"	5.50
24	SB 5½	"	7.00
29	SB 5	"	5.65
Oct. 12	SB 4½	"	3.50
20	SB 5½	"	7.00
20	SB 5	"	5.65
22	SB 5	"	5.65
29	SB 5	"	5.65
Nov. 27	SB 5	"	5.65
Dec. 2	SB 5	"	5.65
10	SB 5	"	5.65
Feb. 5	#1 4½	"	3.50
12	#1 5	Large	5.50
Apr. 3	#1 5	Regular	3.85
3	#1 4½	"	3.00
May 21	#1 5	Large	5.50
Nov. 5	SB 5½	"	7.00
216			
May 26, 1948	#1 5	Large	5.50
June 8	#1 5	"	5.50
16	#1 5	"	5.50
Dec. 10	B 4½	Regular	2.25
Mar. 11, 1949	Fine 5½	"	6.00
May 6	Fine 6	"	5.75
Aug. 3	Fine 4½	"	3.00
29	A Fine 4	Large	2.25
26	SB 5½	Regular	4.25
Dec. 1	SB 5½	"	4.25
Sept. 30	SB 4½	"	2.35
Dec. 20	SB 4½	"	2.20
1	SB 5½	Large	5.50

Taps

Date	Grade		Price Per Doz. Prs.
Boyne City Dry Foot Angle Taps			
Aug. 21	Fine 5½	Large	$8.00
21	SB 5	Regular	4.80
21	SB 4½	"	3.25
Oct. 6	Fine 5½	"	6.50
6	Fine 6	"	7.20
22	Prime 5½	"	6.80
22	Prime 6	"	7.50
Nov. 6	Prime 5½	"	6.80
10	Prime 5½	"	6.80
16	Prime 5½	"	7.25
Feb. 16, 1949	Prime 6	"	7.50
Aug. 26	Prime 5½	"	6.40
23	Prime 6	"	7.00
Sept. 14	Prime 6	Large	8.00
184			
Feb. 16, 1949	Fine 6	Regular	7.00
Aug. 26	Fine 5½	"	5.75
26	Fine 6½	Large	7.40
Nov. 14	Fine 6	Regular	6.00
June 29	A Fine 4½	"	1.75
29	A Fine 5	"	2.50
29	A Fine 5½	"	3.50
July 7	A Fine 5	"	2.50
Jan. 13	SB 5	"	4.00
Feb. 16	SB 6	"	6.00
Apr. 13	SB 5½	"	4.75
13	SB 5	"	.50
13	SB 5½	"	4.50
May 4	SB 5	"	3.50
4	SB 5½	"	4.50
June 25	SB 5	"	3.50
25	SB 5½	"	4.50
Sept. 14	SB 5½	"	4.25
21	SB 5½	"	4.25
26	SB 5½	"	4.25
30	SB 5½	"	4.25
Nov. 14	SB 6	"	5.00
29	SB Prime 5½	"	5.75
Jan. 13	B 5	"	3.50
13	B 5½	"	4.00
13	Special 4½	"	2.25
Feb. 16	Special 5½	"	4.10
16	Special 4½	"	2.10
22	Special 4	Large	2.60
185			
Sept. 15, 1948	SB 4½	Regular	3.15
Apr. 27	SB 5	"	3.50
27	SB 5½	"	4.50
May 6, 1949	Fine 5½	"	6.00
Aug. 23	Fine 7	Large	7.40
23	Fine 7½	"	7.40
June 13	A Fine 5	Regular	2.50
May 18	A Fine 5	"	2.50
9	A Fine 5	"	2.50

Date	Grade		Price Per Doz. Prs.
	Boyne City Dry Foot Angle Taps		
20	SB 5½	"	5.50
28	SB 5½	"	5.50
30	SB 5½	"	5.50
Jan. 14	SB 5	Regular	3.85
14	SB 4½	"	3.00
Feb. 21	SB 5	Large	5.65
Jan. 17	SB 5	Regular	3.85
17	SB 4½	"	3.00
21	SB 5	"	3.85
21	SB 4½	"	3.00
Mar. 11	SB 5½	"	4.85
Aug. 3	SB 4½	"	2.75
Jan. 1	B 4½	"	2.25
17	B 4½	"	2.25
217			
Mar. 8, 1949	B 4½	Regular	2.25
Apr. 13	B 4½	"	2.25
Jan. 17	B 4½	"	2.25
Aug. 5	SB Prime 5	"	4.75
5	SB Prime 5½	"	5.65
Mar. 17, 1950	SB 6	"	4.50
17	SB 5½	"	4.00
20	SB 5½	"	4.00
Oct. 17	SB 5½	"	5.25
Mar. 28	SB 5	"	2.80
July 28	SB 5	"	2.90
28	SB 4½	"	1.95
Mar. 17	SB 5½	Large	5.25
Nov. 29	SB 5½	"	6.75
Dec. 11	SB 5½	"	6.75
13	SB 5½	"	6.75
18	SB 5½	"	6.75
Mar. 17	SB 5	"	4.10
20	SB 5	"	4.10
July 18	SB 4½	"	2.65
Aug. 9	SB 4½	"	2.65
Mar. 27	SB 5	Regular	2.80
Jan. 17	SB 5	Large	4.25
25	SB 5	"	4.25
Feb. 2	SB 5	"	4.25
218			
Feb. 9, 1950	SB 5	Large	4.25
16	SB 5	"	4.25
Mar. 2	SB 5	"	4.25
7	SB 5	"	4.25
Nov. 22	SB 5½	"	6.75
30	SB 5½	"	6.75
Mar. 16	Fine 5	Regular	5.50
Dec. 17, 1951	SB 4½	"	3.75
14	SB 4½	Large	4.00
Feb. 12	SB 5½	Regular	6.50
12	SB 5	Large	6.30
Oct. 2	SB 5	"	6.25
Sept. 6	SB 4½	Regular	4.55
Mar. 13	SB 5	Large	6.30
16	SB 5	"	6.30
13	SB 5½	"	8.00
16	SB 5½	"	8.00

Taps

Date	Grade		Price Per Doz. Prs.
Boyne City Dry Foot Angle Taps			
July 20, 1950	Prime 6	Large	$8.00
20	Prime 6½	"	8.00
Aug. 2	Prime 5½	"	7.40
4	Prime 6½	"	8.00
June 20	Fine 6	"	7.20
Aug. 4	Fine 6	"	7.20
4	Fine 6½	"	7.20
10	Fine 6½	"	7.20
Apr. 6	SB 5½	Regular	4.25
10	SB 5½	"	4.25
Aug. 15	SB 5	Large	4.50
Sept. 5	SB 5	"	4.50
Nov. 22	SB 5½	Regular	4.00
186			
Feb. 13, 1950	Prime 5½	"	6.50
28	Prime 5½	"	6.50
May 31	Prime 6	"	6.50
31	Prime 5½	Large	7.40
31	Prime 6	"	7.60
July 14	Prime 6½	Regular	6.75
14	Prime 6	Large	7.60
Aug. 2	Prime 6	Regular	6.75
Nov. 22	Prime 5½	"	7.50
July 14	Fine 5½	"	5.25
Nov. 22	Fine 5½	"	6.50
22	Fine 6	"	6.75
Oct. 13	A Fine 4½	"	2.25
Nov. 22	A Fine 5	"	3.00
22	A Fine 5	"	3.00
Apr. 10	SB 5½	"	4.25
July 14	SB 5	"	3.00
Aug. 2	SB 5½	"	4.25
18	SB 5½	"	4.25
Oct. 11	SB 4	"	3.00
13	SB 5½	"	4.00
Nov. 21	SB 4	"	3.00
24	SB 5½	"	4.00
July 14	B 5½	"	3.25
Jan. 8, 1951	Prime 5½	"	7.50
8	Prime 6	"	8.00
8	Prime 5½	"	8.25
Dec. 20	Prime 6½	Large	7.50
20	Prime 6	"	7.50
487			
Dec. 20, 1951	Prime 6½	Regular	6.50
Sept. 4	Prime 6½	Large	9.15
Oct. 17	Prime 6	Regular	7.50
Jan. 8	Fine 6	"	7.15
June 15	Fine 6	"	8.00
Sept. 7	Fine 6½	Large	8.55
Dec. 20	Fine 5½	Regular	6.00
Jan. 8	A Fine 6	Large	6.25
10	A Fine 5	Regular	3.25
16	A Fine 6	"	5.25
16	A Fine 5	Large	4.15
16	A Fine 5½	Regular	4.40
22	A Fine 5½	"	5.20

Date	Grade		Price Per Doz. Prs.
Boyne City Dry Foot Angle Taps			
Mar. 23	A Fine 4½	Regular	2.65
29	A Fine 4½	"	2.65
Apr. 9	A Fine 4½	"	2.65
June 1	A Fine 4½	"	2.65
Mar. 29	A Fine 4½	Large	3.25
23	A Fine 5	"	4.50
29	A Fine 5	"	4.50
Apr. 9	A Fine 5	"	4.50
Mar. 23	A Fine 5½	"	6.25
29	A Fine 5½	"	6.25
219			
Apr. 9, 1951	A Fine 5½	Large	$6.25
Oct. 5	Prime 5	"	7.70
Dec. 4, 1952	SB 6	"	4.90
4	SB 5½	"	4.75
Jan. 15	SB 4½	"	4.00
22	SB 4½	"	4.00
17	SB 4½	"	4.00
Aug. 25	SB 5½	"	4.75
26	SB 6	Regular	4.00
26	SB 5½	"	3.75
Oct. 30	SB 4½	"	2.85
July 8	SB 5½	Large	4.80
Mar. 27	SB 5	"	4.50
July 8	SB 5	"	4.25
8	Prime 5	"	6.00
Boyne City Flexible Taps			
Mar. 24, 1948	SB 4½	Regular	4.00
Apr. 14	SB 4½	"	4.00
28	SB 4½	"	4.00
Aug. 3, 1949	Fine 4½	"	3.00
Dec. 16	Fine 4	"	3.00
16	SB 4½	"	2.75
16	SB 4	"	2.75
Oct. 16, 1950	SB 4	"	3.25
Nov. 1	SB 4	"	3.25
220			
Rock Oak Angle Taps			
Dec. 10, 1951	SB 5½	Large	6.25
Nov. 30	SB 4½	Regular	2.65
Feb. 12	SB Prime 5	"	5.15
12	SB Prime 5½	"	6.50
Mar. 20	SB Prime 5	Large	6.30
23	SB Prime 5	"	6.30
27	SB Prime 5	"	6.30
29	SB Prime 5	"	6.30
Apr. 4	SB Prime 5	"	6.30
Mar. 20	SB Prime 5½	"	8.00
27	SB Prime 5½	"	8.00
29	SB Prime 5½	"	8.00
Apr. 18	SB Prime 5½	"	8.00
Feb. 15	SB Prime 5½	"	8.00
Oct. 22	SB Prime 5½	"	8.00
25	SB Prime 5½	"	8.00
Nov. 11	SB Prime 5½	"	8.00
14	SB Prime 5½	"	8.00
21	SB Prime 5½	"	8.00
Feb. 15	SB Prime 5	"	6.30
Mar. 27, 1952	SB Prime 5	"	4.50

Taps

Date	Grade		Price Per Doz. Prs.
Boyne City Dry Foot Angle Taps			
Jan. 26	A Fine 5½	Regular	$4.40
26	A Fine 5½	"	5.20
June 25	A Fine 5½	"	6.40
28	A Fine 4½	"	3.90
Aug. 22	SB 4½	"	4.55
Nov. 6	SB 5	Large	4.50
Oct. 17	SB Prime 6	Regular	6.75
23	SB Prime 5½	"	6.50
Dec. 20	X 5½	"	6.00
Apr. 10, 1952	Prime 5½	Large	7.25
17	Prime 5½	"	7.25
May 26	Prime 5½	Regular	5.75
26	Prime 6	"	6.00
June 12	Prime 5½	"	5.75
188			
June 12, 1952	Prime 6½	Regular	6.25
July 29	Prime 5½	"	5.75
Aug. 5	Prime 6½	"	6.25
22	Prime 7	"	6.25
22	Prime 7	Large	7.25
28	Prime 6½	"	7.25
Mar. 11	Fine 5½	Regular	5.00
27	Fine 5½	"	5.00
26	Fine 6	"	5.25
July 29	Fine 6	"	5.25
Jan. 7	A Fine 5½	"	4.50
7	A Fine 6	"	4.75
11	A Fine 5½	"	4.50
11	A Fine 6	"	4.75
Feb. 8	A Fine 5½	"	4.50
8	A Fine 6	"	4.75
13	A Fine 6	"	4.75
13	A Fine 5½	"	4.50
Mar. 11	A Fine 5½	"	3.75
May 26	SB 6	"	4.50
Aug. 7	SB 5½	Large	5.00
189			
Aug. 4, 1950	A Fine 5½	"	3.75
4	A Fine 6	"	4.00
10	A Fine 5½	"	3.75
Oct. 16, 1951	Prime 5½	"	8.75
Nov. 26	SB Prime 5½	"	7.00
26	SB Prime 6	"	7.00
26	SB Prime 6½	"	7.00
Dec. 20	Fine 5½	"	7.00
Mar. 10, 1952	Prime 6	"	7.25
June 9	Prime 6	"	7.00
July 25	Prime 6	"	7.00
Aug. 13	Prime 6	"	7.00
13	Fine 5½	"	6.00
Howes Oak Angle Taps			
Feb. 24, 1950	Fine 5½	Large	5.50
Mar. 1	Fine 5½	"	5.50
Women's Mooney Flexible Taps			
Apr. 28, 1948	Fine 3½	Regular	3.50
28	Fine 4	"	3.50
28	Prime 3½	"	3.90
28	Prime 4	"	3.90

Mooney Right & Left Men's Flexible Taps

Nov. 10, 1947	SB 4	Regular	3.75
Dec. 26	SB 4	"	3.75
Jan. 14, 1948	SB 4½	"	4.00
Mar. 18	SB 4½	"	4.00

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Boyne City Flexible Taps

Oct. 16, 1950	Prime 4	Regular	4.50
Feb. 21	Fine 4	"	3.00
Mar. 17	Fine 4	"	3.00
May 15	Fine 4	"	3.00
July 20, 1951	SB 4½	"	4.55
Sept. 13	SB 4½	"	4.55
Oct. 4	SB 5½	Large	8.00
July 7, 1952	SB 4	Regular	3.25
16	SB 4	"	3.25
3	SB 4½	"	3.25
7	SB 4½	"	3.25
16	SB 4½	"	3.25

Rock Oak Angle Taps

Aug. 31, 1951	A Fine 4½	Regular	2.65
Sept. 13	A Fine 4½	"	2.65
Apr. 18	A Fine 4½	Large	3.25
Sept. 13	A Fine 4½	"	3.25
Oct. 2	A Fine 4½	"	3.25
June 1	A Fine 5	"	4.50
Sept. 13	A Fine 5	"	4.50
Oct. 2	A Fine 5	"	4.50
Apr. 18	A Fine 5	"	4.50
June 1	A Fine 5	"	4.50
1	A Fine 5½	"	6.25
Sept. 13	A Fine 5½	"	6.25

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Rock Oak Angle Taps

Apr. 18, 1951	A Fine 5½	Larger	6.25
June 1	A Fine 5½	"	6.25
Oct. 9	SB 4½	Regular	2.65
23	SB 4½	"	2.65
Nov. 30	SB 4½	"	2.65
June 15	SB 4½	"	2.65
25	SB 4½	"	2.65
May 29	SB 4½	Large	3.25
June 15	SB 4½	"	3.25
25	SB 4½	"	3.25
Apr. 23	SB 5	"	4.50
May 3	SB 5	"	4.50
21	SB 5	"	4.50
Oct. 11	SB 5	"	4.50
June 15	SB 5	"	4.50
25	SB 5	"	4.50
May 3	SB 5½	"	6.25
June 15	SB 5½	"	6.25
25	SB 5½	"	6.25
Oct. 22	SB 5½	"	6.25
25	SB 5½	"	6.25
Nov. 1	SB 5½	"	6.25
14	SB 5½	"	6.25
21	SB 5½	"	6.25
29	SB 5½	"	6.25
30	SB 5½	"	6.25

Taps

Date	Grade		Price Per Doz. Prs.
Women's Mooney Flexible Taps			
May 18	Prime 4	Regular	$3.90
18	Prime 5	"	3.90
Women's Boyne City Flexible Taps			
Dec. 29, 1952	Prime 3½	Regular	4.00
29	Prime 4	"	4.00
Howes Oak Angle Taps			
Jan. 10, 1950	Prime 5½	Regular	5.50
10	Prime 6	"	6.25
Nov. 22	Prime 5½	"	6.50
Jan. 10	Fine 5½	"	4.75
Feb. 15	Fine 5½	Large	5.50
Apr. 14	Fine 5	"	4.25
Nov. 22	Fine 5½	Regular	5.50
Jan. 8, 1951	Prime 5½	"	7.75
8	Fine 5½	"	6.60
8	Fine 5½	Large	7.92
26	Fine 5½	"	7.92
June 15	Fine 5½	Regular	7.00
Branded and Reject Angle Taps			
Jan. 13, 1949			.30 (Lb.)

Strips

Sanded Flexible Strips		
May 21, 1948	Prime 7"	.80 Lb.
Aug. 21	Prime 7"	.85 Lb.
Jan. 10, 1950	Irregular Clear	.58 Lb.
Jan. 8, 1951	Prime 7"	.90 Lb.
Oct. 17	Irregular Clear	.87 Lb.
3½/4½ Toplift Strips		
Jan. 13, 1949	" "	.60 Lb.
Jan. 8, 1951	" "	.70 Lb.
Feb. 22, 1952	" "	.58 Lb.

Strips

Date	Grade	Price Per Lb.
Boyne City Heavy Fleixble Strips		
Aug. 31, 1949	Prime	$ .95
31	Fine	.95
Boyne City Light Flexible Strips		
Nov. 9, 1951	Prime 7½	1.00
July 25, 1952	Prime 7½	1.10
Boyne City Dry Foot Strips 10/12 Iron		
Oct. 23, 1952	Prime 13"	.92
23	Fine 13"	.82
Men's Soles 8/12		
Aug. 19, 1948	Prime 10/11	.92 Pr.
Mooney Mfrs. Full Soles		
Oct. 23, 1952	Fine 10-11 Large	.75 Pr.

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Taps

Date		Price per Pound
Branded & Reject Taps		
Aug. 21, 1947	Regular	.42
Sept. 6	"	.40
Oct. 12, 1948	Large	.36
Nov. 3	"	.36
5	"	.36
26	"	.36
Dec. 10	"	.36
27	"	.36
28	"	.36
Jan. 14, 1949	Regular	.28
June 22	"	.20
25	"	.20
Aug. 5	"	.23
Sept. 9	"	.21
13	"	.21

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Ends

Date	Grade	Price Per Lb.
	Wide	
Aug. 1, 1950		.26
	Miscut	
Aug. 1, 1950		.30
	Wide Finders	
Aug. 25 1950		.26
Sept. 5		.26
18		.26
	Miscut Finders	
Aug. 25, 1950		.30
Sept. 5		.30
18		.30

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Branded & Reject Taps		
Sept. 14, 1949	Regular	.21
16	"	.21
30	"	.20
Aug. 31	"	.21
Apr. 10, 1950	Large	.25
May 22	"	.25
31	"	.25
Nov. 10	"	.25
24	"	.25
Oct. 9, 1951	Regular	.38
17	"	.38
26	"	.38
Nov. 2	"	.38
8	"	.38
Oct. 22	Large	.43
25	"	.43
Nov. 1	"	.43
5	"	.43
May 27, 1952	Regular	.25
27	Large	.25
June 2	Regular	.25
2	Large	.25
4	Regular	.25
4	Large	.25
5	Regular	.25
5	Large	.25

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Strips

Date	Grade	Price Per Lb.
Heavy Boyne City Dry Foot Strips 13"		
Aug. 5, 1949	Prime	$ .90
Feb. 13, 1950	Prime	.80
15	SB Prime—Military 9/12	.80
28	SB Prime—Military 9/12	.80
Apr. 26	SB Prime—Military 9/12	.90
Oct. 17, 1951	Fine	1.00
17	Prime	1.10
Feb. 22, 1952	Prime	.85
Mar. 27	Prime	.85
Miscuts		
Oct. 7, 1952		.50 Lb.
Heavy Wide Ends		
June 15, 1951		.45 Lb.
Sept. 30, 1952		.33 Lb.
Boyne City Dry Foot Butts		
Aug. 7, 1952		.30 Lb.
Dec. 9		.33 Lb.

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K. Kaplan Son & Co.

Taps

Date	Grade		Price Per Doz. Prs.
Mooney Right and Left Flexible Taps			
Nov. 4, 1947	Prime 5½	Regular	$5.70
28	Prime 6	"	6.70
Dec. 9	SB 6	"	7.30
12	SB 6	"	7.30
22	SB 6	"	7.30
Dec. 6, 1948	Prime 5	"	6.75
6	Prime 6	"	7.90
6	Prime 5½	"	7.40
15	Prime 5½	"	7.40
15	Prime 6½	"	8.00
21	Prime 5½	"	7.40
21	Prime 6½	"	8.00
23	Prime 6½	"	8.00
6	Fine 5½	"	6.75
6	Fine 6	"	7.25
Nov. 4, 1949	Prime 6	"	7.00
May 20	Fine 6	"	6.25
20	Fine 5½	"	5.75
Nov. 4	Fine 5½	"	5.75
Feb. 2	SB 6	"	6.00
14	SB 6	"	6.00
Nov. 4	SB 6½	"	5.25

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Jan. 13, 1950	Prime 5½	Regular	$6.50
9	Prime 6	Large	8.50
9	Prime 5½	"	7.50
9	Prime 5	"	6.75
9	Prime 6½	"	8.50
9	Prime 7	"	8.50
Feb. 15	Prime 5½	Regular	6.50

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Men's Soles

Date	Grade		Price per Pair
Nov. 11, 1947	Prime 10–11	8/12	82
Dec. 23	Prime 10–11	8/12	86
July 14, 1948	Prime 10–11	8/12	88
Oct. 13	Prime 10–11	8/12	85
Dec. 20	Prime 10–11	8/12	88
27	Prime 10–11	8/12	88
May 6	Prime 10–11	Size 12	87
Dec. 2	Fine 11–12	8/12	83
Mar. 23, 1949	Prime 10–11	8/12	85
Jan. 6	Prime 10–11	8/12	88
June 22	Prime 10–11	8/12	80
Apr. 5	Prime 10–11	Size 12	90
Oct. 5	Prime 10–11	Size 12S	90
Dec. 9	Prime 10–11	8/12S	83
Sept. 30	Prime 10–11	8/12S	80
30	Prime 10–11	9/13C	1 10
Jan. 16, 1950	Prime 10–11	8/12	83
23	Prime 10–11	8/12	83
24	Prime 10–11	8/12	83
Mar. 28	Prime 10–11	8/12	78

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Men's Soles

Date	Grade		Price per Pair
Apr. 7, 1950	Prime 10–11	8/12	78
20	Prime 10–11	8/12	78
Sept. 1	Prime 10–10½	8/12N	78
June 15, 1951	Prime 10–11	8/12N	1 00
28	Prime 10–11	8/12N	1 00
July 31	X–A–OX 10–10½	Size 11B	1 14
31	X–A–OX 10–10½	Size 12B	1 20
Aug. 1	X–A–OX 11–11½	Size 12 Brogue	1 25
1	X–A–OX 11–11½	Size 12N	1 25
	Stamped Prime 11/12		
1	X–A–OX 10–10½	Size 12N	1 20
	Stamped Prime 10/11		
3	Prime 10–11	8/12N	1 00
	Stamped (S) Prime 10/11		
17	Prime 10–11	8/12N	1 00
	Stamped Mooney Prime 10/11		
Mar. 13, 1952	Prime 10–11	8/12D	80
18	Prime 10–11	8/12D	80
Apr. 2	Prime 10–11	8/12D	80
15	Prime 10–11	8/12D	80
17	Prime 10–11	8/12D	80

228

Rejects

Date		Price per Lb.
Dec. 23, 1948	Large	36
23	"	36
Jan. 4, 1949	"	36
5	"	36

Date	Grade		Price Per Doz. Prs.
	Mooney Right and Left Flexible Taps		
June 28	Prime 5½	Regular	6.25
28	Prime 6	"	6.50
28	Prime 5½	Large	7.50
28	Prime 6	"	7.50
29	Prime 6	"	7.50
July 14	Prime 5½	Regular	6.25
24	Prime 6	"	7.00
24	Prime 6½	"	7.00
24	Prime 5½	"	7.00
27	Prime 5½	"	7.00
31	Prime 4½	"	4.50
Aug. 7	Prime 6	Large	8.25
7	Prime 6½	"	8.50
Sept. 27	Prime 5½	"	7.50
June 28	Fine 6	Large.	6.50
28	Fine 5½	Regular	5.25
28	Fine 6	"	5.50
29	Fine 5½	"	5.25
July 24	Fine 5½	"	5.75
Aug. 2	Fine 4½	"	3.75
10	Fine 6	Large	7.50
195			
May 9, 1950	SB 6	Regular	4.75
9	SB 5½	"	4.50
June 28	SB 6	Large	6.00
29	SB 6	"	6.00
July 20	SB 5½	"	5.50
July 31	SB 6½	Regular	5.75
Aug. 2	SB 5½	Large	5.50
29	SB 5½	"	5.50
14	SB 6½	Regular	5.75
29	SB 6½	"	5.75
7	B 5½	"	3.75
7	B 6½	"	4.75
7	B 6	"	4.75
Feb. 2, 1951	Prime 5½	"	8.80
9	Prime 5½	"	8.80
2	Fine 6	"	8.50
2	SB 6	"	7.75
2	SB 5½	"	7.15
9	SB 6	"	7.75
9	SB 5½	"	7.15
2	X 5	Large	8.58
2	X 5½	"	9.96
2	X 6	"	10.20
Feb. 20, 1952	Prime 5	Regular	5.50
Apr. 18	Prime 5	"	5.25
16	Prime 5	Large	6.25
May 5	Prime 5½	"	6.75
5	Prime 5	"	6.25
196			
Nov. 10, 1952	Prime 5½	Regular	6.00
13	Prime 5½	"	6.00
13	Prime 6	Large	7.50
Dec. 1	Prime 5½	Regular	6.00
4	Prime 5½	"	6.00
4	Prime 5½	"	6.25
4	Prime 5½	Large	7.25

229

Strips

Date	Grade	Price per Lb.
Rock Oak Strips		
Oct. 14, 1951	SB Prime 13"	1 00
Boyne City Dry Foot Heavy 13" Strips		
Apr. 3, 1948	SB Prime	80
Jan. 6, 1949	Fine	90
May 4	Fine	85
Jan. 9, 1950	SB Prime	80
May 25, 1951	SB Prime	1 02
Mar. 27, 1952	SB Prime	75
Boyne City Dry Foot Finders Strips		
Sept. 17, 1949	Fine 13"	85
Nov. 3	Fine 13"	85
Dec. 23	Fine 13"	85
Dec. 11, 1950	Fine 13"	95
May 11	B Clear 13"	75
June 30	B Clear 13"	75
Dec. 1	Prime 13"	1 05
Aug. 26, 1952	Fine 13"	73
Boyne City Dry Foot Strips		
Nov. 10, 1947	B Clear 13"	1 00
July 16, 1948	SB 13"	95
Sept. 16	SB 13"	95
23	SB 13"	95
23	SB 13"	95

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Boyne City Dry Foot Strips		
Mar. 9, 1949	Fine 13"	85
July 22	Fine 13"	85

231

Full Soles

Date	Grade		Price per Pairs
Mooney Manufacturers Full Soles			
Nov. 13, 1950	Fine 12	Large	1 00
22	Fine 12	"	4 00
Jan. 25, 1951	Fine 13	"	1 00
Nov. 7, 1952	Prime 10–11	"	88
25	Prime 10–11	"	88
Dec. 12	Prime 10–11	"	88
16	Prime 10–11	"	88
Boyne City Dry Foot Full Soles			
Feb. 5, 1952	Fine 11–12		90

232

Date		Price per Lb.
Branded & Reject Taps		
June 5, 1952	Regular	25
5	Large	25
11	Regular	25
11	Large	25
12	Regular	25
July 25	"	25
29	"	25
Aug. 22	Extra large	25
27	" "	25
Sept. 14	" "	25
Oct. 21	"	25

Taps

Date	Grade		Price Per Doz. Prs.
Mooney Right and Left Flexible Taps			
Feb. 20	Fine 5½	Large	$6.50
20	Fine 5	Regular	4.75
20	SB 5	"	3.75
May 19	SB 5½	Large	5.00
27	SB 5½	"	5.00
Aug. 25	SB 5½	Regular	4.00
Angle Taps Boyne City Dry Foot			
Sept. 6, 1947	Prime 6½	Regular	6.50
6	Prime 6	"	6.25
Oct. 1	Prime 5½	"	6.00
1	Prime 5	"	5.50
1	Prime 6½	"	6.75
1	Prime 6	"	6.50
1	Prime 5	"	5.00
8	Prime 5½	"	6.00
1	Prime 6	"	6.25
8	Prime 6	"	7.00
15	Prime 6½	"	6.75
Dec. 1	Prime 5½	"	6.00
9	Prime 5½	"	7.85
9	Prime 6	"	8.50
Sept. 6	B 6	"	5.00
6	B 5½	"	4.50
6	#1 6	"	5.50
6	#1 5½	"	5.00
6	#1 5	"	4.25
Boyne City Dry Foot Angle Taps			
Dec. 4, 1947	Prime 6	Large	7.25
4	Prime 5½	"	6.15
Sept. 6	Fine 5	Regular	5.25
6	Fine 5½	"	5.75
Oct. 1	Fine 6	"	6.50
Dec. 1	Fine 6	"	6.00
1	Fine 5½	"	7.25
9	Fine 6	"	8.00
1	SB 5½	"	6.00
1	SB 6	"	7.00
9	SB 6	"	7.00
9	SB 5½	"	6.00
17	SB 6	"	7.00
Sept. 6	Special 5½	"	4.00
Apr. 21, 1948	Prime 5½	"	6.80
June 18	Prime 5½	"	6.80
July 14	Prime 5½	"	6.80
Aug. 21	Prime 5½	"	7.20
21	Prime 6	"	7.75
21	Prime 6½	"	8.00
Sept. 24	Prime 6½	"	8.00
24	Prime 6	"	7.75
1	Prime 5½	"	7.20
14	Prime 5½	"	7.20
24	Prime 5½	"	7.20
Aug. 10	Prime 5½	Large	8.40
Oct. 22	Prime 6½	Regular	8.00
22	Prime 5½	"	7.20
Nov. 6	Prime 5½	"	7.20
Oct. 22	Prime 6	"	7.75

Date		Price per Lb.
Miscut Angle Taps		
May 12, 1948	Regular	.55
Boyne City Flexible Branded & Reject Taps		
Sept. 29, 1949	Regular	.20
Oct. 11	"	.20

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Sears-Roebuck & Co.

Taps

Date	Grade	Price Per Doz. Prs.
Men's Mooney Right and Left Flexible Taps		
Feb. 7, 1951	A Fine 5 Regular	4.50
Sept. 5	" " " "	4.80
Oct. 11	" " " "	4.80
26	" " " "	4.80
Dec. 4	" " " "	4.80
6	" " " "	4.80
Jan. 11, 1952	" " " "	4.80
Feb. 1	" " " "	4.80
Apr. 8	" " " "	4.80
May 22	" " " "	4.25
June 3	" " " "	4.25
July 11	" " " "	4.25
Aug. 1	" " " "	4.25
12	" " " "	4.25
Oct. 21	" " " "	3.70
28	" " " "	3.70
Aug. 25	" " " "	4.25

234

Heavy Finders Strips

Date	Grade	Price per Lb.
Aug. 21, 1947	B Clear 8½	.77
Oct. 1	" " "	.77
Nov. 4	" " "	.93
17	" " "	1.03
21	" " "	1.03
20	" " "	1.03
Dec. 2	" " "	1.03
9	" " "	1.03
12	" " "	1.03
22	" " "	1.03
Feb. 2, 1948	" " "	1.03
12	" " "	1.03
20	" " "	1.03
Mar. 5	" " "	1.03
Apr. 21	" " "	1.03
May 27	" " "	1.03
Sept. 8	" " "	.85
9	" " "	.85
24	" " "	.85
Oct. 15	" " "	.85
20	" " "	.85
Nov. 19	" " "	.85
24	" " "	.85

235

Dec. 6, 1948	B Clear 8½"	.85
Jan. 6, 1949	" " "	.85

198

Date	Grade		Price Per Doz. Prs.
Boyne City Dry Foot Angle Taps			
Jan. 8, 1948	SB 6½	Regular	$7.00
8	SB 6	"	7.00
8	SB 5½	"	6.00
Feb. 27	SB 5	"	4.50
27	SB 5½	"	5.50
Mar. 2	SB 6½	"	7.00
Aug. 21	SB 6½	"	6.50
Sept. 15	SB 6½	"	6.50
Oct. 22	SB 6½	"	6.50
Aug. 21	SB 6	"	6.25
Sept. 15	SB 6	"	6.25
Aug. 10	SB 5½	"	5.80
Apr. 21	SB 5	"	4.20
May 18	SB 5	"	4.20
Aug. 10	SB 5	"	4.70
10	SB 4½	"	3.25
Mar. 2	SB 4½	"	3.25
Sept. 1	SB 4½	"	3.15
1	SB 4	"	2.75
Apr. 13	SB 4	"	2.75
Aug. 10	SB 7	Large	7.60
10	SB 6	"	7.35
10	SB 5½	"	6.90
Sept. 24	SB 5½	"	6.50
Aug. 12	SB 6	"	7.35
Oct. 6	SB 6½	"	7.60
21	SB 7	"	7.60
28	SB 5½	"	6.90
Nov. 5	SB 5½	Regular	7.20

199

Feb. 10, 1949	Prime 6	Large	$9.25
Sept. 9	Prime 5½	"	7.50
Aug. 2	Fine 5½	"	6.50
3	Prime 6½	Regular	7.00
Nov. 11	Prime 6½	"	7.25
Feb. 4	Prime 6	"	7.50
Apr. 20	Prime 6	"	7.00
Aug. 3	Prime 6	"	6.90
Nov. 11	Prime 6	"	7.25
Apr. 20	Prime 5½	"	6.50
May 25	Prime 5½	"	6.50
Aug. 5	Prime 5½	"	6.40
10	Prime 5½	"	6.40
Apr. 20	Prime 5	"	6.00
Aug. 3	Fine 6	"	6.00
Apr. 20	Fine 5½	Large	7.00
Nov. 11	SB 6½	Regular	5.25
Dec. 1	SB 6½	"	5.25
Feb. 4	SB 6	"	6.00
Aug. 3	SB 6	"	5.20
Nov. 11	SB 6	"	5.25
Apr. 20	SB 5½	"	4.60
Aug. 3	SB 5½	"	4.25
26	SB 5½	"	5.80
Nov. 11	SB 5½	"	4.50
Apr. 20	SB 5	"	3.50
22	SB 5	"	3.50
Feb. 4	SB 6	Large	6.80

Date	Grade	Price per Lb.
	Heavy Finders Strips	
Feb. 9	B Clear 8½"	.85
June 20	" " "	.80
Aug. 15	" " "	.80
Sept. 12	" " "	.80
26	" " "	.80
Oct. 19	" " "	.80
Dec. 1	" " "	.80
23	" " "	.80
16	" " "	.80
Feb. 9, 1950	" " "	.80
28	" " "	.80
Mar. 10	" " "	.80
Apr. 6	" " "	.75
May 16	" " "	.75
June 8	" " "	.75
13	" " "	.75
July 10	" " "	.75
14	" " "	.75
Aug. 9	" " "	.75
31	" " "	.75
236		
Sept. 1, 1950	B Clear 8½"	.75
12	" " "	.75
20	" " "	.75
26	" " "	.85
29	" " "	.85
Oct. 2	" " "	.75
16	" " "	.85
20	" " "	.85
20	" " "	.85
Nov. [illegible]	" " "	.85
20	" " "	.85
Dec. 18	" " "	.85
29	" " "	.85
Feb. 15, 1951	" " "	1.07
Mar. 23, 1951	" " "	1.07
27	" " "	1.07
July 13	" " "	1.07
Aug. 17	" " "	1.07
Oct. 17	" " "	1.07
30	" " "	1.07
Dec. 5	" " "	1.07
Jan. 15, 1952	" " "	1.07
Feb. 1	" " "	.90
Mar. 13	" " "	.90
Apr. 24	" " "	.90
May 25	" " "	.90
237		
July 3, 1952	B Clear 8½"	.70
29	" " "	.70
Aug. 28	" " "	.70
Sept. 25	" " "	.70
Oct. 20	" " "	.70
28	" " "	.70

HENRY F. KEATING.

Duly sworn to by Henry F. Keating; jurat omitted in printing.

238-239 PROOF OF SERVICE (Omitted in Printing)

Date	Grade		Price Per Doz. Prs.
	Boyne City Dry Foot Angle Taps		
Aug. 3	SB 6	"	6.15
Feb. 4	Special 6	Regular	4.60
4	Special 5½	"	4.25
Jan. 14	Special 5	"	3.10
200			
Jan. 14, 1949	SB 5	Regular	$4.00
Apr. 21	SB 5	"	3.50
Aug. 19	B 5½	"	3.50
Nov. 4	B 5½	Large	4.70
Nov. 11	B 5½	Regular	3.75
June 30, 1950	Prime 6½	"	6.75
July 26	Prime 6½	"	7.00
May 11	Prime 6	"	6.50
June 30	Prime 6	"	6.50
30	Prime 5½	"	6.25
July 7	Prime 5½	"	6.25
Aug. 11	Prime 5½	"	6.25
Sept. 26	Prime 5½	"	6.25
Oct. 17	Prime 5½	"	6.25
Oct. 20	Prime 5½	"	6.25
Jan. 6	Prime 5	"	5.75
Feb. 15	Prime 5	"	5.75
July 6	Prime 6	"	6.50
May 1	Prime 6	Large	7.75
June 30	Prime 6	"	7.50
30	Prime 6	"	7.50
Jan. 27	Prime 5½	"	7.50
May 1	Prime 5½	"	7.25
July 19	Prime 5½	"	7.25
Aug. 11	Prime 5½	"	7.25
May 1	Prime 7	"	7.75
June 30	Fine 6	Regular	5.50
July 17	Fine 6	"	5.50
Oct. 17	Fine 6	"	5.50
July 18	SB 5	"	3.10
26	SB 5	"	3.25
201			
Jan. 27, 1950	Fine 5½	Regular	$5.50
June 30	Fine 5½	"	5.25
30	Fine 6	Large	6.50
Jan. 27	Fine 5½	"	6.50
Aug. 11	Fine 5½	"	6.00
Nov. 10	Fine 5½	"	6.00
Dec. 1	Fine 5½	"	6.00
June 30	Fine 5	"	5.40
Aug. 7	Fine 6	"	7.20
Aug. 2	A Fine 5	Regular	3.25
14	A Fine 4½	"	2.50
2	SB 4	"	2.75
July 27	SB 6	Large	4.25
June 30	SB 6½	Regular	4.50
May 1	SB 6	"	4.75
June 30	SB 6	"	4.50
Apr. 7	SB 5½	"	4.25
June 30	SB 5½	"	4.00
July 25	SB 5½	"	4.00
Aug. 17	SB 5½	"	4.00
Sept. 6	SB 5½	"	4.00

240. **Exhibit "H" to Answer**

In the United States District Court for the Northern District of Illinois, Eastern Division

No. 50 C 229

WILLIAM ROHLFING, ET AL., PLAINTIFFS,

vs.

CAT'S PAW RUBBER CO., INC., ET AL., DEFENDANTS

FURTHER ANSWER OF DEFENDANT, ARMOUR AND COMPANY, TO PLAINTIFF'S INTERROGATORIES 3 B, 17 AND 19 OF OCTOBER 21, 1952—Filed June 15, 1954

Now comes defendant, Armour and Company, an Illinois corporation, by J. R. Malcolm, Assistant Sales Manager of Armour Leather Company, a division of Armour and Company, and makes the following further answer to Interrogatories Nos. 3 B, 17 and 19, as propounded by plaintiffs under date of October 21, 1952 and as modified by the ruling of this Court herein on January 29, 1954.

Interrogatory 3 B

The following are the amounts (not including freight, cartage, taxes, and like charges) of each item (as listed in response to Interrogatory 3 A) that were sold by this defendant to any other defendant to this action from January 1, 1945 to date of plaintiffs' interrogatories:

Item	Jack Klinger, d/b/a A. Leveton & Co.	K. Kaplan Sons & Company	Reick-Langendorf Co.
Soles	4,880.36	2,424.72	None
Taps	131,099.35	105,595.36	$156.00
Strips	13,702.50	12,866.50	None
Bends	81.38	193.12	None
Offal	34,852.64	3,912.96	92.00
Toplifts	5,569.80	2,991.67	None
	$190,186.03	$127,984.33	$248.00
O.P.A. Adjustments	756.81	1,251.41	
Unidentified Sales	369.00	36.00	
	$191,311.84	$129,271.74	$248.00

	Date	Grade		Price Per Doz. Prs.
		Boyne City Dry Foot Angle Taps		
	July 12	SB 5½	"	4.00
	May 1	SB 6	Large	5.50
	1	SB 5½	"	5.15
	Aug. 2	SB 5	"	4.25
	Nov. 11	SB 5	"	4.25
	May 1	SB Prime 5½	Regular	5.00
	Aug. 1	SB Prime 5	"	4.50
	July 26	B 6	"	4.00
	26	B 5½	"	3.50
202				
	June 30, 1950	B 6	Large	$4.50
	30	B 5½	"	3.90
	30	A Fine 6	Regular	3.75
	30	A Fine 5½	"	3.25
	July 26	A Fine 6	"	4.00
	26	A Fine 5½	"	3.50
	Aug. 9	X 7	"	6.75
	9	X 6½	"	6.75
	9	X 5½	"	6.25
	9	X 5	"	5.50
	9	X 6	Large	7.75
	9	X 5½	"	7.50
	9	X 5	"	6.50
	Sept. 18	X 5½	"	7.50
	18	X 5	"	6.50
	Nov. 10	X 5	"	6.50
	Dec. 22	X 5	"	6.50
	Jan. 2, 1951	Prime 6	Regular	8.00
	2	Prime 5½	"	7.75
	Feb. 5	Prime 6	"	8.90
	5	Prime 5½	"	8.65
	Jan. 2	Prime 7	"	8.25
	Nov. 30	Prime 7	Large	7.50
	30	Fine 5½	"	7.00
	Jan. 2	Fine 6	Regular	7.25
	Feb. 5	Fine 6	"	8.35
	Jan. 2	Fine 5½	"	7.00
	Feb. 5	Fine 5½	"	8.15
	Jan. 2	Fine 5	"	6.00
	Feb. 6	Fine 5	"	7.00
	July 31	Fine 5	"	6.50
	Nov. 30	Fine 7	Large	7.00
	Feb. 5	A Fine 5½	Regular	6.00
203				
	Jan. 2, 1951	SB 6	Regular	$6.50
	2	SB 5½	"	5.75
	July 31	SB 5½	"	6.50
	31	SB 5	"	5.50
	Feb. 5	SB 6	Large	9.12
	May 8	SB 5½	"	8.40
	Sept. 7	SB 5	"	4.25
	Nov. 6	SB 5	"	4.25
	Nov. 2	SB Prime 7½	Regular	6.50
	Sept. 21	SB Prime 5½	"	6.25
	21	SB Prime 7	"	6.50
	24	SB Prime 6	"	6.50
	24	SB Prime 6½	"	6.50
	Oct. 9	SB Prime 6½	"	6.50

241 In the case of K. Kaplan Sons & Company, the invoices of said items indicate that such were shipped either to that concern or were, on its order, shipped to persons not parties to this action (including Grippo & Company, in whose favor a summary judgment of dismissal was entered herein on August 31, 1953). In the case of Reick-Langendorf Company, the invoices of said items indicate that such were shipped to that concern. In the case of Jack Klinger, d/b/a A. Leveton & Company, the invoices of said items indicate that such were shipped either to him or were, on his order, shipped to Goldblatt Bros., Inc., to South Clark Street Shoe Repair, Inc., and to persons not parties to this action (including Grippo & Company, in whose favor a summary judgment of dismissal was entered herein on August 31, 1953). Such indicated shipments, made on the order of Jack Klinger, d/b/a A. Leveton & Company to Goldblatt Bros., Inc., and to South Clark Street Shoe Repair, Inc., were as follows:

Item	Goldblatt	South Clark Street
Soles	None	None
Taps	$8,477.50	$4,095.00
Strips	None	None
Bends	None	None
Offal	None	None
Toplifts	None	None

Interrogatory 17

It is not understood that this interrogatory was designed to cover prompt payment discounts, because of its request for detailed particulars. In order, however, that there be no possibility of confusion, it may be stated that Armour and Company has, since January 1, 1945 and continuing to the date of plaintiffs' interrogatories, allowed all its customers of shoe materials a cash discount of 1% (in the case of taps, strips, toplift and certain types of soles and offal) and of 2% (in the case of bends and certain types of soles and offal known as whole stock, i. e., uncut material) for payment of any invoice on or before its due date. All such invoices were due and payable in thirty days.

Date	Grade		Price Per Doz. Prs.
Boyne City Dry Foot Angle Taps			
Feb. 5	B 5½	"	6.00
5	X 6	Large	10.02
12	X 5½	"	9.78
5	X 5½	"	9.78
Jan. 4	X 5	"	6.50
Feb. 12	X 6½	"	10.20
5	X 6½	"	10.20
Feb. 20, 1952	Prime 6	"	7.50
Dec. 1	Prime 6	"	7.00
May 22	Prime 6½	Regular	5.75
Apr. 21	Prime 6	Large	6.75
21	Prime 5½	Large	6.75
21	Prime 5	"	6.25
June 3	Prime 6	"	7.00
204			
May 29, 1952	Prime 5½	Large	$6.75
May 29	Prime 5½	"	6.75
Apr. 24	Prime 7	Regular	5.75
21	Prime 7	Large	7.00
21	Prime 6½	"	6.75
Nov. 13	Fine 5½	"	6.00
May 20	SB 5½	Regular	4.00
29	SB 5½	"	4.00
Apr. 21	SB 5	"	3.75
Feb. 2	SB 6	Large	6.25
5	SB 5½	"	6.00
May 20	SB 5½	"	5.00
29	SB 5½	"	5.00
29	B 5½	Regular	3.75
Boyne City Flexible Taps			
Nov. 30, 1951	Prime 5½	Regular	6.50
May 19, 1952	Prime 5½	"	5.75
Nov. 13	Prime 5½	"	6.25
May 19	Prime 5½	Large	6.75
Nov. 13	Prime 5½	"	7.25
Feb. 20	Prime 5½	"	7.50
Dec. 4	Prime 6½	"	7.00
Boyne City Sanded Taps			
Aug. 22, 1950	SB 4	Regular	2.75
25	SB 4	"	2.75
Sept. 5	SB 4	"	2.75
Jan. 10	SB 4	"	2.50
Aug. 16	SB 4	"	2.75
Sept. 14	SB 4	"	2.75
Nov. 2	SB 4	"	3.00
205			
Rock Oak Angle Taps			
Feb. 5, 1952	Prime 6½	Large	$6.50
22	Prime 6	Regular	5.50
Apr. 21	Prime 6½	Large	6.00
21	Prime 5	"	5.25
May 5	Prime 6	Regular	5.00
20	Prime 5½	Large	5.75
29	Prime 5½	"	5.75
29	Prime 6	Regular	5.00
29	Prime 5½	"	4.75
Oct. 7	Prime 6½	"	6.00
28	Prime 5½	"	5.75
May 29	Prime 6	Large	6.00

242 Interrogatory 19

I. The following are the prices, and the invoice dates of all changes in price, which were charged by this defendant to K. Kaplan Sons & Company for each item of shoe findings or shoe materials since January 1, 1945 to date of plaintiffs' interrogatories:

A. Soles

Initial Price	Date	Price Change	Date
1. Grade and Quality: Prime 12 Iron 8-12 Armour Quality Soles.			
$1.07 each	2-16-49		
2. Grade and Quality: Prime 11 Iron 8-12 Armour Quality Soles.			
$ .93	2-16-49	+$ .02	6-24-49
3. Grade and Quality: Prime 11 Iron Size 12 Armour Quality Soles.			
$1.02 each	11- 8-49	- .02	1-10-52
4. Grade and Quality: Prime 11 Iron Size 11 Armour Full Soles.			
$ .97 each	11- 8-49	- .02	1-10-52
5. Grade and Quality: Prime 11 Iron Size 10 Armour Quality Soles.			
$ .93 each	11- 8-49		
6. Grade and Quality: Prime 11-11-½ Iron Size 13 Armour Quality Soles.			
$1.04 each	1-10-52		
7. Grade and Quality: Prime 10 Iron 8-12 Armour Quality Soles.			
$ .88 each	8-27-48		
8. Grade and Quality: Fine 9½ Iron Size 12 Armour Quality Soles.			
$ .83 each	8-12-49		

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9. Grade and Quality: #1 10½ Iron Armour Quality Soles.			
$ .49 each	3-28-46		
10. Grade and Quality: #1 11-11-½ Iron Armour Quality Soles.			
$ .54 each	6-21-46		
11. Grade and Quality: #1 12 Iron Armour Quality Soles.			
$ .59 each	5- 2-46		
12. Grade and Quality: OXXH 8-12 Men's Soles.			
$ .74 each	12- 9-48		

B. Taps

1. Grade and Quality: X-Prime 40 Men's Ottawa Taps.			
$2.20 per dz.	8- 3-45		
2. Grade and Quality: X-Prime 45 Men's Ottawa Taps.			
$3.00 per dz.	7-17-45	+$2.25	2-13-51
3. Grade and Quality: X-Prime 50 Men's Ottawa Taps.			
$6.35 per dz.	4-28-48		
4. Grade and Quality: X-Prime 55 Men's Ottawa Taps.			
$6.75 per dz.	4-15-48		

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Date	Grade		Price Per Doz. Prs.
	Amoflex Sanded Taps		
May 23, 1951	Fine 4		4.30
	Women's Mooney Flexible Taps		
Mar. 1, 1948	Prime 4	Regular	4.25
1	Prime 4½	"	4.25
1	Prime 5	"	4.25
Apr. 6	Prime 4½	"	3.75
6	Prime 5	"	3.75
May 10	Prime 4	"	4.00
10	Prime 4½	"	3.90
10	Prime 5	"	3.90
14	Prime 4	"	4.00
20	Prime 4	"	4.00
20	Prime 5	"	3.90
	#1 Regular		
Aug. 1, 1950	3½		3.00
	Men's Soles 8/12		**Price per Pair**
Sept. 9, 1948	Prime 10–11		.85
Sept. 1, 1949	Prime 10–11		.80
Aug. 10	Prime 10–11		.80
Apr. 14	Prime 11–12		.88
12	Prime 11–12		.88
July 19	Fine 10–11		.75
Jan. 21	#1 10–11		.73
Apr. 12	#1 10–11		.69
14	#1 10–11		.69
21	#1 10–11		.69
Feb. 28, 1950	Prime 10–11		.80

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Date	Grade		Price Per Lb.
	Mooney Flexible Strips		
Aug. 9, 1949	Prime 13"		.95
Jan. 10, 1950	Prime 13"		.95
Apr. 24	Prime 13"		.90
Dec. 21	Prime 13"		1.15
Apr. 18, 1951	Prime 13"		1.15
July 31	Prime 13"		1.22
Nov. 30	Prime 13"		.95
Feb. 20, 1952	Fine 13"		.75
Apr. 18	Fine 13"		.72
May 22	Prime 13"		.90
Dec. 9	Prime 13"		.90
	Boyne City Dry Foot Finders Strips		
Aug. 2, 1949	Fine 13"		.80
Aug. 14, 1950	Fine 13"		.90
Sept. 11	Fine 13"		.90
Apr. 18, 1951	Fine 13"	10–12 iron	1.15
Aug. 7	Fine 13"	"	1.10
Aug. 20	Fine 13"	12 up	1.10
Aug. 24	Prime 13"	"	1.20
Nov. 30	Fine 13"	10–12	.85
Nov. 30	Prime 13"	"	.90
Feb. 5, 1952	Prime 13"	12 up	.80
Feb. 22	Prime 13"	"	.80
Feb. 22	Fine 13"	"	.75

Initial Price	Date	Price Change	Date
5. Grade and Quality: X-Prime 65 Men's Ottawa Taps.			
$7.60 per dz.	4-15-48	−$1.55	8-16-48
6. Grade and Quality: Y-Fine 40 Men's Ottawa Taps.			
$2.10 per dz.	8-20-45	+$ .75	8-27-48
244			
7. Grade and Quality: Y-Fine 45 Men's Ottawa Taps.			
$2.60 per dz.	6-25-45	+$ .05	8-23-49
		+ .35	11- 1-50
8. Grade and Quality: Y-Fine 45 Men's Extra-Large Ottawa Taps.			
$3.10 per dz.	8-15-46		
9. Grade and Quality: Z-40 Men's Ottawa Taps.			
$1.95 per dz.	1-17-45	+$1.35	12- 4-46
		− .50	2-20-47
		− .40	8-26-47
10. Grade and Quality: Z-45 Men's Ottawa Taps.			
$2.30 per dz.	1- 5-45	+$ .80	9-26-47
		− .05	9-10-48
11. Grade and Quality: Z-50 Men's Ottawa Taps.			
$3.00 per dz.	3- 1-45	−$2.10	11- 8-46
		− 1.25	8- 6-47
		+ .15	5- 4-48
		+ .15	9-28-48
		− .75	3-18-49
		− .50	1-24-50
		− .15	7-21-50
12. Grade and Quality: Z-55 Men's Ottawa Taps.			
$3.30 per dz.	2- 7-45	+$2.30	12- 3-46
		− 1.00	8-28-47
		+ .40	5-11-48
		− .75	1-24-50
13. Grade and Quality: Z-60 Men's Ottawa Taps.			
$3.55 per dz.	1- 8-45	+$2.45	12-14-46
		− .20	3-11-48
		− .55	10-20-48
14. Grade and Quality: Z-65 Men's Ottawa Taps.			
$3.85 per dz.	2-14-45	+$2.65	12-13-46
245			
15. Grade and Quality: Z-45 Men's Extra-Large Ottawa Taps.			
$2.75 per dz.	6-27-46	+$1.15	12- 4-46
16. Grade and Quality: Z-50 Men's Extra-Large Ottawa Taps.			
$3.60 per dz.	1-19-45	+$1.05	4-14-48
		+ .20	9-10-48
		− 1.10	7- 7-49
		+ .40	1-17-50
		− .05	3- 3-50
		+ .15	8-24-50
		+ 2.75	6-14-51
17. Grade and Quality: Z-BB Men's Extra-Large Ottawa Taps.			
$3.95 per dz.	1-17-45		

Initial Price	Date	Price Change	Date
18. Grade and Quality: Z–60 Extra-Large Ottawa Taps.			
$4.25 per dz.	3–15–46		
19. Grade and Quality: 9/11 Iron Ottawa Military Sel. Taps			
$3.81 per dz.	1– 5–45	+$ .15	8–23–45
20. Grade and Quality: 11/14 Iron Ottawa Military Sel. Taps.			
$4.53 per dz.	1– 5–45	+$ .09	9–26–45
21. Grade and Quality: 9/11 Iron Extra-Large Ottawa Military Sel. Taps.			
$4.77 per dz.	1–30–45	+ .15	11– 1–45
22. Grade and Quality: 11/14 Iron Extra-Large Ottawa Military Sel. Taps.			
$5.61 per dz.	7– 3–45	+ .06	11– 1–45
23. Grade and Quality: Z–50 Straight Pattern Ottawa Taps.			
$2.90 per dz.	1–30–45		

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24. Grade and Quality: Y-Fine 40 Old Pattern Ottawa Taps.			
$2.55 per dz.	8– 7–47		
25. Grade and Quality: Z–40 Old Pattern Ottawa Taps.			
$2.20 per dz.	8– 7–47		
26. Grade and Quality: Z–45 Old Pattern Ottawa Taps.			
$2.95 per dz.	8– 7–47	−$1.20	7–13–49
27. Grade and Quality: Z–55 Old Pattern Ottawa Taps.			
$4.45 per dz.	8– 7–47		
28. Grade and Quality: Z–60 Old Pattern Ottawa Taps.			
$5.00 per dz.	8– 7–47		
29. Grade and Quality: 5/7 Iron Old Pattern Ottawa Taps.			
$1.60 per dz.	1– 8–45		
30. Grade and Quality: 9/11 Iron Old Pattern Ottawa Taps.			
$5.30 per dz.	8– 7–47		
31. Grade and Quality: X-Prime 50 Boy's Ottawa Taps.			
$3.00 per dz.	10– 9–46		
32. Grade and Quality: X-Prime 55 Boy's Ottawa Taps.			
$3.40 per dz.	10– 9–46		
33. Grade and Quality: X-Prime 60 Boy's Ottawa Taps.			
$4.00 per dz.	6–11–46		
34. Grade and Quality: Y-Fine 50 Boy's Ottawa Taps.			
$2.80 per dz.	6–11–46		
35. Grade and Quality: Y-Fine 55 Boy's Ottawa Taps.			
$2.90 per dz.	10– 9–46		

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36. Grade and Quality: Y-Fine 60 Boy's Ottawa Taps.			
$3.30 per dz.	10– 9–46		
37. Grade and Quality: Special 5" and Up Ottawa Taps.			
$2.10 per dz.	3–18–46		

Initial Price	Date	Price Change	Date
38. Grade and Quality: Special 5" and Up Butt Taps.			
$4.00 per dz.	12-19-50		
39. Grade and Quality: G. B. Medium Ottawa Taps.			
$2.00 per dz.	10-24-46		
40. Grade and Quality: G. B. 5" and Up Regular Ottawa Taps.			
$5.75	12-19-50		
41. Grade and Quality: G. B. 4½" and Up Regular Ottawa Taps.			
$3.25 per dz.	12-19-50		
42. Grade and Quality: Prime 45 Joppa Taps.			
$3.00 per dz.	8- 3-50	+$2.25	2-13-51
43. Grade and Quality: Prime 50 Joppa Taps.			
$5.50 per dz.	8-28-47		
44. Grade and Quality: Prime 55 Joppa Taps.			
$7.00 per dz.	3- 9-49		
45. Grade and Quality: Prime 55 K. G. Joppa Taps.			
$7.50 per dz.	7-11-51		
46. Grade and Quality: Prime 60 K. G. Joppa Taps.			
$7.50 per dz.	7-11-51		
47. Grade and Quality: Prime 65 K. G. Joppa Taps.			
$7.50 per dz.	7-11-51		
48. Grade and Quality: S. B. Prime 40 Joppa Taps.			
$2.10 per dz.	6-13-46		
248			
49. Grade and Quality: SB Prime 45 Joppa Taps.			
$2.70 per dz.	6-13-46	+$ .10	10- 3-49
		- .20	1-19-50
		+ 1.40	2-13-51
50. Grade and Quality: SB Prime 50 Joppa Taps.			
$5.40 per dz.	4-14-48		
51. Grade and Quality: SB Prime 55 Joppa Taps.			
$6.45 per dz.	4-29-48	+$ .30	5-11-48
52. Grade and Quality: SB Prime 60 Joppa Taps.			
$6.75 per dz.	7-21-50		
53. Grade and Quality: SB Prime 60 Extra-Large Joppa Taps.			
$7.35 per dz.	7-21-49	-$ .35	8- 9-49
54. Grade and Quality: Fine 45 Joppa Taps.			
$3.00 per dz.	2- 4-49	+$1.75	2-13-51
55. Grade and Quality: #1 45 Joppa Taps.			
$2.45 per dz.	6-13-		
56. Grade and Quality: #1 55 Joppa Taps.			
$3.85 per dz.	9-11-45		
57. Grade and Quality: A-45 Joppa Taps.			
$1.65 per dz.	2-17-50		

Initial Price	Date	Price Change	Date
58. Grade and Quality: A–55 Men's Joppa Taps.			
$3.35 per dz.	9–11–45		
59. Grade and Quality: Clear 55 Joppa Taps.			
$3.25 per dz.	9–11–45		
60. Grade and Quality: Clear 60 Joppa Taps.			
$3.45 per dz.	9–11–45		
61. Grade and Quality: 9/11 Iron Joppa Military Taps.			
$3.81 per dz.	2–28–45	+$ .15	10–23–45
249			
62. Grade and Quality: 11/14 Iron Joppa Military Taps.			
$4.62 per dz.	9– 3–46		
63. Grade and Quality: G. B. Heavy Joppa Taps.			
$3.25 per dz.	3–28–46		
64. Grade and Quality: Prime 3½" Women's Flexible Taps.			
$2.25 per dz.	2–16–45	+$ .25	12–13–45
		+ 1.30	7–20–46
		− 1.30	8–17–46
		+ 1.90	11–26–46
		− .65	3–21–47
		− .10	8–28–47
		+ .95	5–10–48
		− .70	1–26–49
		− .15	5– 5–50
		+ 1.75	1–19–51
		− .25	5–17–51
65. Grade and Quality: Prime 4" Women's Flexible Taps			
$2.25 per dz.	1–17–45	+$ .25	9–27–45
		+ 1.30	7–25–46
		− 1.30	9–11–46
		+ 1.90	11–26–46
		− .40	2–24–47
		− .15	3–21–47
		− .05	7–25–47
		+ 1.40	5– 7–48
		− .50	9–22–49
		+ .10	12–16–49
		+ .10	6–19–50
		− .10	9– 7–50
		+ 1.50	1–19–51
		− .25	5–17–51
66. Grade and Quality: Prime 4½" Women's Flexible Taps.			
$2.50 per dz.	3–21–46	+$1.30	7–20–46
		− 1.30	8–17–46
		+ 1.90	11–26–46
		− .40	2–24–47
		− .20	6–12–47
		+ .50	4– 7–48
		− .05	4–29–48
		− .50	8–23–49
		+ .15	9–22–49
		− .05	3–21–50
		+ .10	6–19–50
		− .05	7–27–50
		+ 1.60	3–27–51
		− .25	5–17–51

Initial Price	Date	Price Change	Date
250			
67. Grade and Quality: Prime 5" Women's Flexible Taps.			
$2.60 per dz.	3-28-46	+$1.95	11-26-46
		− .55	5-13-47
		− .10	1-26-49
		− .40	2- 6-50
68. Grade and Quality: Fine 3½" Women's Flexible Taps.			
$1.85 per dz.	2-28-45	+$ .20	10-23-45
		+ 1.75	11-13-46
		− .15	3-21-47
69. Grade and Quality: Fine 4" Women's Flexible Taps.			
$2.10 per dz.	1- 5-45	+ .20	11- 8-45
		+ 1.75	11-13-46
		− .30	2-24-47
		− .35	7-25-47
		+ 1.60	1-19-51
70. Grade and Quality: Fine 4½" Women's Flexible Taps.			
$4.05 per dz.	11-26-46	−$ .30	2-24-47
		− .35	6-12-47
71. Grade and Quality: Semi-fine 3" Women's Flexible Taps.			
$2.30 per dz.	3- 3-50		
72. Grade and Quality: Semi-fine 3½" Women's Flexible Taps.			
$1.65 per dz.	2-16-45	+$ .15	10-23-45
		+ 1.45	11-26-46
		− .35	7-16-48
		− .25	2- 4-49
		− .15	3-18-49
		− .30	5-24-49
		− .05	8-18-49
		+ .15	11-14-49
		+ .10	5-12-50
		+ .10	8-31-50
		+ .50	11-10-50
		+ 1.25	5-17-51
73. Grade and Quality: Semi-fine 4" Women's Flexible Taps.			
$1.75 per dz.	1-17-45	+$ .20	9-27-45
		+ 2.30	5-17-51
74. Grade and Quality: Clear 3" Women's Flexible Taps.			
$1.00 per dz.	6-21-46		
75. Grade and Quality: Clear 3½" Women's Flexible Taps.			
$1.15 per dz.	7-31-45	+$ .10	5- 2-46
251			
76. Grade and Quality: Clear 4" Women's Flexible Taps.			
$1.35 per dz.	8-28-45	+$ .15	4-25-46
77. Grade and Quality: Clear 4½" Women's Flexible Taps.			
$1.50 per dz.	5- 2-46		
78. Grade and Quality: Clear 5" Women's Flexible Taps.			
$1.55 per dz.	6-21-46		
79. Grade and Quality: Prime 65 Sylva Flexible Taps.			
$8.50 per dz.	1-25-51		

Initial Price	Date	Price Change	Date
23. Grade and Quality: A 7" Medium Flexible Strips.			
$ .75 per lb.	8-18-49		
279			
24. Grade and Quality: Prime 11" Heavy Flexible Strips.			
$ .62 per lb.	1-22-46	+$ .28	6-27-49
25. Grade and Quality: A 11" Heavy Flexible Strips.			
$1.00 per lb.	11-19-46		
26. Grade and Quality: A 11" Medium Flexible Strips.			
$ .90 per lb.	3-21-47	−$ .10	2- 3-50
27. Grade and Quality: Prime 13" Extra-Heavy Flexible Tulip Strips.			
$ .90 per lb.	4-27-50		
28. Grade and Quality: Fine 11" Medium Strips.			
$1.00 per lb.	6- 5-47	−$ .10	3-28-49
29. Grade and Quality: Fine 11" Heavy Flexible Strips.			
$ .60 per lb.	5- 2-46	+$ .30	1-26-50
		− .02	7-19-50
		+ .07	7-27-50
30. Grade and Quality: X-Prime 8½" Medium Ottawa Strips.			
$ .58 per lb.	7-10-46		
31. Grade and Quality: X-Prime 8½" Heavy Ottawa Strips.			
$ .62 per lb.	7-10-46		
32. Grade and Quality: X-Prime 8½" Extra-Heavy Ottawa Strips.			
$ .70 per lb.	3- 9-45		
33. Grade and Quality: Y-Fine 8½" Medium Ottawa Strips.			
$ .51 per lb.	2-26-45	+$ .36	11- 8-46
34. Grade and Quality: Y 8½" Fine Heavy Ottawa Strips.			
$ .55 per lb.	1-15-45		
280			
35. Grade and Quality: Y-Fine 8½" Extra Heavy Ottawa Strips.			
$ .60 per lb	1-15-45		
36. Grade and Quality: Y-Fine 9" Extra-Heavy Ottawa Strips.			
$ .84 per lb.	11- 5-47		
37. Grade and Quality: 8-1/2/14 Iron 13" Ottawa Military Strips.			
$ .65 per lb.	8-29-45	+$ .45	11- 8-46
38. Grade and Quality: SB Prime Medium 8½" Joppa Strips.			
$ .50	9-20-46		
39. Grade and Quality: SB Prime Heavy 13" Joppa Strips.			
$ .92 per lb	10- 3-47	−$ .12 per lb.	6-23-49

D. Bends

1. Grade and Quality: Prime Flexible Bends.			
$ .62 per lb.	4- 4-46	+$ .23	8-16-49

Initial Price	Date	Price Change	Date
80. Grade and Quality: Prime 50 Extra-Large Sylva Flexible Taps.			
$6.00 per dz.	5- 5-50		
81. Grade and Quality: Prime 55 Sylva Extra-Large Flexible Taps.			
$7.00 per dz.	5- 5-50		
82. Grade and Quality: Prime 60 Extra-Large Sylva Flexible Taps.			
$7.75 per dz.	5- 5-50		
83. Grade and Quality: SB Prime 50 Sylva Flexible Taps.			
$6.00 per dz.	1-25-51		
84. Grade and Quality: Fine 55 Sylva Flexible Taps.			
$4.75 per dz.	2- 3-50		
85. Grade and Quality: Fine 60 Sylva Flexible Taps.			
$5.25 per dz.	2- 3-50		
86. Grade and Quality: Prime 55 Men's Flexible Taps.			
$6.00 per dz.	2-12-48		
87. Grade and Quality: Prime 60 Men's Flexible Taps.			
$6.50 per dz.	3-18-48	+$1.00	6- 1-50
88. Grade and Quality: Fine 40 Buffed and Treated Extra-Large Taps.			
$2.60 per dz.	9-28-50		
89. Grade and Quality: Fine 40 Buffed and Treated Taps.			
$2.50 per dz.	3- 9-50	+$1.00	8- 7-52
252			
90. Grade and Quality: Fine 45 Buffed and Treated Taps.			
$4.00 per dz.	4-27-48	−$ .50 per dz.	8- 7-52
91. Grade and Quality: Prime 40 Buffed and Treated Taps.			
$4.00 per dz.	8- 7-52		
92. Grade and Quality: Prime 45 Buffed and Treated Taps.			
$3.25 per dz.	2- 6-50	+$ .75	8-20-52
C. Strips			
1. Grade and Quality: Fine 8½" Heavy Flexible Strips.			
$ .60 per lb.	4-25-46		
2. Grade and Quality: Prime 11 Extra-Heavy Flexible Strips.			
$ .73 per lb.	10-24-46		
3. Grade and Quality: Fine 11" Medium Strips.			
$ .58 per lb.	6-21-46		
4. Grade and Quality: Fine 11" Heavy Flexible Strips.			
$ .60 per lb.	1-11-46	+$ .50	11-13-46
		− .10	4-17-47
		− .10	2- 6-50
		− .05	4-25-50
5. Grade and Quality: Fine 11" Extra Heavy Flexible Strips.			
$1.05 per lb.	4-17-47		
6. Grade and Quality: Fine 19" Flexible Strips (8/9 Iron).			
$ .95 per lb.	4- 2-47	−$ .05	5- 1-47

Initial Price	Date	Price Change	Date
2. Grade and Quality: Sole Leather Bends.			
$5.00 (flat price)	11-17-48		

E. Offal

1. Grade and Quality: Heavy Wide Ottawa Butts.			
$ .29 per lb.	1-9-45	+$ .02	9-12-46
		+ .22	11- 8-46
2. Grade and Quality: Heavy-Regular Ottawa Butts.			
$ .26 per lb.	2-19-45		
3. Grade and Quality: Branded Pieces.			
$ .40 per lb.	1- 6-49	-$ .02	2-21-49
4. Grade and Quality: Branded Strips.			
$ .40 per lb.	1-22-45		
281			
5. Grade and Quality: Branded Ottawa Taps.			
$ .58 per lb.	12-17-46		
6. Grade and Quality: Branded Heavy Joppa Taps.			
$ .46 per lb.	2-12-47	+$ .12	12-16-47
7. Grade and Quality: Joppa Miscuts.			
$ .37 per lb.	8-25-49		
8. Grade and Quality: Ottawa Heeling.			
$ .11 per lb.	3-16-45		
9. Grade and Quality: Joppa Heeling.			
$ .17 per lb.	9-30-48		
10. Grade and Quality: Clear Special B Ottawa Taps.			
$ .28 per lb.	6-11-46	+$ .11	3-12-47
11. Grade and Quality: Special B Loose Ottawa Taps.			
$ .21 per lb.	2-28-45	-$ .03	8-13-48
12. Grade and Quality: B. Loose 4½" Up Joppa Taps.			
$ .46 per lb.	2-24-47	+$ .09	11-25-47
		- .25	8-25-49
13. Grade and Quality: B. Loose Ottawa Taps.			
$ .34 per lb.	10-22-46		
14. Grade and Quality: B-2 Loose Ottawa Taps.			
$ .25 per lb.	12-20-45	+$ .17	12-16-46
		- .09	4-21-50
282			
15. Grade and Quality: B. 4½" and Up Loose Ottawa Taps.			
$ .34 per lb.	1- 9-45	+$ .18	7-18-46
		- .18	8-22-46
		+ .24	11- 8-46
		- .08	1-24-47
		- .04	1-30-47
		+ .04	2- 3-47
		- .02	4-30-47
		+ .15	11- 4-47

Initial Price	Date	Price Change	Date

7. Grade and Quality: Fine 13" Heavy Monarch Flexible Strips.
$ .80 per lb. 3-25-47 −$ .03 7-18-47

253

8. Grade and Quality: 11/12 Iron Prime 13" Extra-Heavy Sylva Flexible Strips.
$ .90 1-26-50

9. Grade and Quality: X-Prime 13" Extra-Heavy Ottawa Strips.
$ .74 per lb. 5- 9-46

10. Grade and Quality: X-Prime 8½" Medium Ottawa Strips.
$ .58 per lb. 8- 9-45 +$ .41 11-15-46

11. Grade and Quality: X-Prime 8½" Heavy Ottawa Strips.
$ .62 per lb. 5- 3-45

12. Grade and Quality: X-Prime 8½" Extra-Heavy Ottawa Strips.
$ .70 per lb. 2-26-45

13. Grade and Quality: X-Prime 9" Medium Ottawa Strips.
$1.00 per lb. 2- 4-49

14. Grade and Quality: Y-Fine 8½" Medium Ottawa Strips.
$ .51 per lb. 2-26-45

15. Grade and Quality: Y-Fine 8½" Heavy Ottawa Strips.
$ .55 per lb. 1-15-45 +$ .39 11-22-46

16. Grade and Quality: Y-Fine 8½" Extra-Heavy Ottawa Strips.
$ .60 per lb. 1-15-45

17. Grade and Quality: Y-Fine 9" Extra-Heavy Ottawa Strips.
$ .73 per lb. 8-10-49

18. Grade and Quality: 8-1/2/14" Iron 13" Ottawa Military Strips.
$ .65 per lb. 8-27-45

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19. Grade and Quality: 13" Military Strips.
$ .98 per lb. 7-20-46

20. Grade and Quality: Prime 8½" Heavy Joppa Strips.
$ .75 per lb. 8- 4-47

21. Grade and Quality: SB Prime Medium 8½" Joppa Strips.
$ .50 per lb. 7-18-46

22. Grade and Quality: SB Prime Heavy 8½" Joppa Strips.
$ .55 per lb. 4-25-46

23. Grade and Quality: SB Prime Heavy 13" Joppa Strips.
$ .85 per lb. 2-24-47 −$ .01 8-28-47

D. Bends

1. Grade and Quality: #1 Flexible Bends 6-7 Iron.
$ .90 per lb. 3-12-47

2. Grade and Quality: A Heavy Joppa Bends.
$ .56 per lb. 3-12-46

Initial Price	Date	Price Change	Date
		− .04	2-25-48
		+ .02	6-11-48
		− .04	4-14-49
		− .02	9-29-49

16. Grade and Quality: G. B. 5" and Up Ottawa Taps.
$ .53 per lb. 6-11-46

17. Grade and Quality: G. B. 40 Ottawa Taps.
$ .50 per lb. 11-17-48

18. Grade and Quality: Special Finding Pieces, 8 Iron and Up.
$ .21 per lb. 1- 8-45

19. Grade and Quality: Small Findings Pieces.
$ .12 per lb. 1- 8-45

20. Grade and Quality: Prime Toe Tips.
$ .52 per lb. 7-20-45

21. Grade and Quality: Rejects.
$ .10 per lb. 11-17-48 +$ .04 1-20-50

22. Grade and Quality: Medium Cow Bellies.
$ .32 per lb. 5-24-49

23. Grade and Quality: McKay 8-12 Insoles.

$ .12	8-19-49	+$ .01	9- 8-49
		+ .01	9-22-49

24. Grade and Quality: #1 Clear Strips.
$ .45 per lb. 1- 2-45

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F. Toplifts

1. Grade and Quality: Toplift Pieces.

$ .50 per lb.	1-10-46	+$ .20	6-24-48
		+ .08	2-24-49

2. Grade and Quality: Toplift Stock (Heavy)
$1.00 per lb. 4-19-48

3. Grade and Quality: Prime Women's Backbone Toplift Pieces.
$ .74 per lb. 6-15-50 +$ .01 7-27-50

4. Grade and Quality: Prime Women's Center Toplift Pieces.
$ .74 per lb. 6-15-50 +$ .01 7-27-50

5. Grade and Quality: Toplift Stock.
$ .45 per lb. 1-10-46

6. Grade and Quality: Special 10 Iron Up Toplift Stock.
$ .40 per lb. 3-13-45

7. Grade and Quality: Special 8-8½ Iron Toplift Stock.
$ .30 per lb. 1-11-45

8. Grade and Quality: Special 9-9½ Iron Toplift Stock.
$ .35 per lb.

9. Grade and Quality: Special 10-10½ Iron Toplift Stock.
$ .40 per lb. 1-11-45

E. Offal

Initial Price	Date	Price Change	Date
1. Grade and Quality: Heavy Wide Ottawa Butts.			
$ .29 per lb.	1-15-45		
2. Grade and Quality: Heavy-Regular Ottawa Butts.			
$ .26 per lb.	1-15-45		
3. Grade and Quality: Heavy Wide Joppa Butts.			
$ .34 per lb.	8- 3-50	+$ .11	6- 5-51
		− .05	1- 4-52
4. Grade and Quality: Branded Pieces (Government Regulation Cut).			
$ .35 per lb.	1-22-45		
255			
5. Grade and Quality: Branded Pieces.			
$ .40 per lb.	1- 7-49	−$ .05	3-16-49
6. Grade and Quality: Branded Heavy Regular Taps.			
$ .55 per lb.	3- 6-52		
7. Grade and Quality: Branded Heavy Joppa Taps.			
$ .65 per lb.	6-21-51		
8. Grade and Quality: Joppa Miscuts.			
$ .38 per lb.	8-31-49		
9. Grade and Quality: Heavy Ottawa Miscuts.			
$ .30 per lb.	2- 5-45	− .15	7-24-46
10. Grade and Quality: Light Ottawa Miscuts.			
$ .45 per lb.	7-25-46		
11. Grade and Quality: Ottawa Heeling.			
$ .11 per lb.	2- 5-45		
12. Grade and Quality: Clear B 5" & Up Ottawa Taps.			
$ .42 per lb.	10- 2-45		
13. Grade and Quality: Clear Special B Ottawa Taps.			
$ .42 per lb.	7-25-46		
14. Grade and Quality: B-2 Loose Ottawa Taps.			
$ .25 per lb.	3- 7-45	+$ .08	10-12-50
15. Grade and Quality: B. 4½" & Up Loose Ottawa Taps.			
$ .34 per lb.	6-21-46		

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II. The following are the prices, and the invoice dates of all changes in price, which were charged by this defendto Jack Klinger, d/b/a A. Leveton & Company, for each item of shoe findings or shoe material since January 1, 1945 to date of plaintiff's interrogatories:

A. Soles

1. Grade and Quality: Prime 12 Iron 8-12 Armour Quality Soles.			
$ .86 each	5-28-47	+$ .14	7-27-50
2. Grade and Quality: Prime 11 Iron 8-12 Armour Quality Soles.			
$ .82 each	5-28-47	+$ .03	4-14-48
		+ .05	6-22-48
		− .02	7-22-49
		+ .02	9-22-49
		− .03	5- 8-50

Initial Price	Date	Price Change	Date
3. Grade and Quality: Prime 11 Iron Size 11 Armour Quality Soles.			
$ .93 each	8–12–49		
4. Grade and Quality: Prime 10 Iron 8–12 Armour Quality Soles.			
$ .57 each	11–20–45	+$ .23	4–14–48
		+ .05	7–27–50
5. Grade and Quality: Size 10 Men's 2 A Outsoles.			
$ .47 each	9–18–45		
6. Grade and Quality: Size 9 Men's 2 A Outsoles.			
$ .45 each	9–18–45		
7. Grade and Quality: Fine 10 Iron 8–12 Armour Quality Soles.			
$ .55 each	11–20–45	+$ .48	7–25–47
8. Grade and Quality: Fine 11 Iron 8–12 Armour Quality Soles.			
$ .59 each	4– 4–46	+$ .26	6–22–48
		+ .02	8–16–49
257			
9. Grade and Quality: Size 11 Men's 2 A Outsoles.			
$ .49 each	9–18–45		
10. Grade and Quality: Size 12 Men's 2 A Outsoles.			
$ .52 each	9–18–45		
11. Grade and Quality: Prime 11 Iron 8–12 Buffed Flexible Soles.			
$ .88 each	7–22–49		
12. Grade and Quality: 100 x 8–13 Men's Armour Outsoles.			
$ .64 each	7–21–50		
13. Grade and Quality: #1 10½ Iron Armour Quality Soles.			
$ .49 each	3–28–46		
14. Grade and Quality: #1 11–11–½ Iron Armour Quality Soles.			
$ .54 each	11– 6–45		
15. Grade and Quality: #1 12 Iron Armour Quality Soles.			
$ .59 each	11– 6–45		
258			
16. Grade and Quality: G. B. 5" & Up Extra-Large Ottawa Taps.			
$ .53 per lb.	6–11–46		
17. Grade and Quality: Special Finding Pieces, 8 Iron & Up.			
$ .21 per lb.	1– 5–45		
18. Grade and Quality: Small Findings Pieces.			
$ .12 per lb.	1– 5–45		
19. Grade and Quality: Prime Toe Tips.			
$ .52 per lb.	8–14–45		
20. Grade and Quality: 8 Iron Single Headless Shoulders.			
$ .44 per lb.	8–19–49	+$ .04	10–31–49
		+ .07	9–14–50
21. Grade and Quality: 9 Iron Headless Shoulders.			
$ .47 per lb.	6– 9–50		
22. Grade and Quality: 8/9 Iron Headless Shoulders.			
$ .55 per lb.	10– 5–50		

Initial Price	Date	Price Change	Date
23. Grade and Quality: #1 Clear Strips.			
$ .45 per lb.	1- 5-45		

F. Toplifts

1. Grade and Quality: Toplift Pieces.			
$ .64 per lb.	7-10-47	+$ .02	8-14-47
		+ .01	5- 3-48
		+ .03	5-26-48
2. Grade and Quality: Prime Women's Backbone Toplift Pieces.			
$ .80 per lb.	9-25-50		

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3. Grade and Quality: Prime Women's Center Toplift Pieces.			
$ .80 per lb.	9-25-50		
4. Grade and Quality: Toplift Stock.			
$ .55 per lb.	7-18-47	+ .01	8-14-47
		+ .01	4-26-48
		+ .03	6-16-48
		- .01	12- 6-48
5. Grade and Quality: 3½" Ottawa Toplift Strips.			
$ .60 per lb.	2-14-50		
6. Grade and Quality: Size 5 Prime 10-10-½ Iron Women's Ottawa Toplifts.			
$1.07 per lb.	6-27-46		
7. Grade and Quality: Size 7 Prime 10-10-½ Iron Women's Ottawa Toplifts.			
$1.07	6-27-46		

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B. Taps

1. Grade and Quality: X-Prime 60 Men's Ottawa Taps.			
$7.00 per dz.	10- 9-47	+$ .60	5-13-48
		- .60	6- 9-50
2. Grade and Quality: X-45 Men's Extra-Large Ottawa Taps.			
$3.60 per dz.	7-10-46		
3. Grade and Quality: X-Prime 55 Men's Extra Large Ottawa Taps.			
$7.40 per dz.	6- 9-50		
4. Grade and Quality: X-Prime 60 Men's Extra Large Ottawa Taps.			
$8.25 per dz.	6- 9-50		
5. Grade and Quality: X-Prime 40 Men's Ottawa Taps.			
$2.20 per dz.	7-10-46		
6. Grade and Quality: X-Prime 45 Men's Ottawa Taps.			
$3.00 per dz.	6-25-45		
7. Grade and Quality: X-Prime 55 Men's Ottawa Taps.			
$6.05 per dz.	7-30-47	-$ .05	8- 5-47
		+ 1.00	8-16-48
		- .75	6- 9-50

Initial Price	Date	Price Change	Date
8. Grade and Quality: X-Prime 65 Men's Ottawa Taps.			
$6.35 per dz.	6-24-47	+$ .80	10- 9-47
		+ .45	4-19-48
		− .60	11-17-48
9. Grade and Quality: X-Prime 65 Men's Extra-Large Ottawa Taps.			
$8.90 per dz.	5-11-48	+$ .25	5-12-48
261			
10. Grade and Quality: Y-Fine 50 Men's Ottawa Taps.			
$2.80 per dz.	6-11-46		
11. Grade and Quality: Y-Fine 55 Men's Ottawa Taps.			
$4.90 per dz.	7-14-47	+$ .35	7-30-47
		+ .15	8- 5-47
		− .15	5-13-49
12. Grade and Quality: Y-Fine 60 Men's Ottawa Taps.			
$5.85 per dz.	7-30-47		
13. Grade and Quality: Y-Fine 50 Men's Extra-Large Ottawa Taps.			
$5.75 per dz.	6-10-49		
14. Grade and Quality: Y-Fine 55 Men's Extra-Large Ottawa Taps.			
$6.25 per dz.	6-10-49		
15. Grade and Quality: Y-Fine 40 Men's Ottawa Taps.			
$2.10 per dz.	1- 9-45		
16. Grade and Quality: Y-Fine 45 Men's Ottawa Taps.			
$2.60 per dz.	1-17-45	+$ .50	7-14-47
		− .10	1-17-49
17. Grade and Quality: Y-Fine 45 Men's Extra-Large Ottawa Taps.			
$3.10 per dz.	3-27-46		
18. Grade and Quality: Z-40 Men's Ottawa Taps.			
$1.95 per dz.	8-23-45	+$ .40	7-31-47
		− .35	4-25-49
262			
19. Grade and Quality: Z-45 Men's Ottawa Taps.			
$2.30 per dz.	8-23-45	+$ .45	6-10-47
		+ .20	3-25-48
		+ .05	5-20-48
		+ .05	7-19-48
		− .30	11- 4-48
		− .45	3-24-49
		− .30	5- 3-49
20. Grade and Quality: Z-50 Men's Ottawa Taps.			
$3.00 per dz.	4- 3-45	+$1.15	3-10-47
		− .50	6-10-47
		− .15	7-14-47
		+ .25	9-17-47
		+ .45	10- 9-47
		− .10	5-20-48
		+ .05	7-19-48
		− .15	10-15-48
		− .60	3-24-49
		− .25	5- 3-49

Initial Price	Date	Price Change	Date
		− .30	8– 5–49
		+ .05	1–18–50
		− .15	6–30–50

21. Grade and Quality: Z–55 Men's Ottawa Taps.

$3.30 per dz.	1– 8–45	+$2.30	11– 8–46
		− .60	3–10–47
		− .55	6–10–47
		− .15	6–19–47
		− .05	6–25–47
		+ .40	9–17–47
		+ .25	10– 9–47
		+ .50	1–22–48
		− .40	3–25–48
		+ .10	5–11–48
		+ .15	7–19–48
		− .15	10–18–48
		+ .15	11–19–48
		− .50	3–24–49
		− .50	6–14–49
		− .30	8– 5–49
263		+ .05	6–30–50

22. Grade and Quality: Z–60 Men's Ottawa Taps.

$3.55 per dz.	1– 9–45	+$2.45	11– 8–46
		− .40	5–20–48
		+ .15	1– 5–49
		− .40	3–31–49
		− .35	6–14–49

23. Grade and Quality: Z–45 Straight Pattern Ottawa Taps.
$2.20 per dz. 7–12–46

24. Grade and Quality: Z–55 Straight Pattern Ottawa Taps.
$3.20 per dz. 7–12–46

25. Grade and Quality: Z–60 Straight Pattern Ottawa Taps.
$3.45 per dz. 7–12–46

26. Grade and Quality: Z–65 Straight Pattern Ottawa Taps.
$3.75 per dz. 7–12–46

27. Grade and Quality: X-Prime 45 Old Pattern Ottawa Taps.
$3.50 per dz. 11–17–48

28. Grade and Quality: Z–50 Old Pattern Ottawa Taps.
$2.90 per dz. 2– 9–45

29. Grade and Quality: 9/11 Iron Straight Pattern Ottawa Military Taps.
$3.86 per dz. 7–12–46

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Initial Price	Date	Price Change	Date

30. Grade and Quality: Special 45 Extra-Large Ottawa Taps.
$6.00 per dz. 11–17–48

31. Grade and Quality: Special 5" and Up Extra-Large Ottawa Taps.
$4.00 per dz. 11–17–48

Initial Price	Date	Price Change	Date
32. Grade and Quality: Special .5" and Up Straight Pattern Ottawa Taps.			
$2.00 per dz.	7-12-46		
33. Grade and Quality: Z-65 Men's Ottawa Taps.			
$3.85 per dz.	4-26-45	+$ .65	11-17-48
34. Grade and Quality: Z-45 Men's Extra-Large Ottawa Taps.			
$2.75 per dz.	1-11-45	+$ .60	3-25-48
		+ .15	7-19-48
		− .75	3-24-49
		− .25	5-16-49
		− .25	3- 2-50
35. Grade and Quality: Z-50 Men's Extra-Large Ottawa Taps.			
$3.60 per dz.	1-11-45	+$ .95	8-26-47
		+ .20	3-25-48
		+ .10	7-19-48
		− .45	3-31-49
		− .40	6-14-49
		− .35	8-18-49
36. Grade and Quality: Z-55 Men's Extra-Large Ottawa Taps.			
$3.95 per dz.	1-11-45	+$1.40	7-31-47
		+ .55	5-11-48
		+ .15	7- 1-48
		− .45	3-31-49
		− .50	1-18-50
265			
37. Grade and Quality: Z-60 Extra-Large Ottawa Taps.			
$4.25 per dz.	3-16-45	+$1.75	7-31-47
		+ .50	5-20-48
		− .25	3-31-49
38. Grade and Quality: 9/11 Iron Ottawa Military Sel. Taps.			
$3.81 per dz.	1-17-45	+$ .15	8-23-45
39. Grade and Quality: 11/14 Iron Ottawa Military Sel. Taps.			
$4.53 per dz.	1- 5-45	+$ .09	9-18-45
		+ 3.23	11- 8-46
40. Grade and Quality: 9/11 Iron Extra-Large Ottawa Military Sel. Taps.			
$4.77 per dz.	1-30-45	+$ .15	10-31-45
41. Grade and Quality: 11/14 Iron Extra-Large Ottawa Military Sel. Taps.			
$5.61 per dz.	7-13-45	+$ .06	10-31-45
42. Grade and Quality: Z-50 Straight Pattern Ottawa Taps.			
$2.90 per dz.	1-30-45		
43. Grade and Quality: Z-45 Old Pattern Ottawa Taps.			
$2.20 per dz.	3- 7-45		
44. Grade and Quality: Z-55 Old Pattern Ottawa Taps.			
$3.20 per dz.	2- 9-45		
45. Grade and Quality: Y-Fine 50 Boys' Ottawa Taps.			
$2.80 per dz.	6-11-46		
266			
46. Grade and Quality: Y-Fine 55 Boy's Ottawa Taps.			
$2.90 per dz.	10-10-46		

Initial Price	Date	Price Change	Date
47. Grade and Quality: Y-Fine 60 Boy's Ottawa Taps.			
$3.30	6-11-46		
266			
48. Grade and Quality: G. B. 5" and Up Regular Ottawa Taps.			
$4.25 per dz.	6-12-50		
49. Grade and Quality: Prime 65 Joppa Taps.			
$8.25 per dz.	12-15-48		
50. Grade and Quality: Prime 60 Extra-Large Joppa Taps.			
$9.05 per dz.	12- 3-48		
51. Grade and Quality: Prime K. G. 45 Joppa Taps.			
$2.50 per dz.	6- 9-50		
52. Grade and Quality: Prime 50 K. G. Joppa Taps.			
$4.40 per dz.	5-26-50		
53. Grade and Quality: SB Prime 65 Joppa Taps.			
$7.50 per dz.	8-10-48	+$ .25	12-15-48
54. Grade and Quality: Fine 50 Joppa Taps.			
$4.25 per dz.	5-19-50		
55. Grade and Quality: Fine 65 Joppa Taps.			
$7.50 per dz.	12-15-48		
267			
56. Grade and Quality: Fine 60 Extra-Large Joppa Taps.			
$8.50 per dz.	12- 3-48		
57. Grade and Quality: #1 50 Joppa Taps.			
$4.50 per dz.	10-29-47		
58. Grade and Quality: 5B Regular 45 Joppa Taps.			
$1.65 per dz.	1-17-50		
59. Grade and Quality: Clear 45 Joppa Taps.			
$2.20 per dz.	3-28-46		
60. Grade and Quality: Clear 50 Joppa Taps.			
$3.75 per dz.	8- 9-48		
61. Grade and Quality: SB Prime 40 Sanded Joppa Taps.			
$3.65 per dz.	10- 8-47	+$ .10	11-13-47
62. Grade and Quality: Prime 45 Joppa Taps.			
$3.00 per dz.	7-27-50		
63. Grade and Quality: Prime 50 Joppa Taps.			
$5.00 per dz.	8-12-49	+$ .25	5-19-50
		+ .25	7-13-50
64. Grade and Quality: Prime 55 K. G. Joppa Taps.			
$5.65 per dz.	5-26-50		
65. Grade and Quality: Prime 60 K. G. Joppa Taps.			
$6.25 per dz.	5-26-50		

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Initial Price	Date	Price Change	Date
66. Grade and Quality: SB Prime 540 Joppa Taps.			
$3.40 per dz.	10-29-47	+$ .35	12-30-47
67. Grade and Quality: SB Prime 45 Joppa Taps.			
$2.80 per dz.	9-30-49	−$ .20	1- 6-50
68. Grade and Quality: SB Prime 50 Joppa Taps.			
$5.90 per dz.	3-28-49		
69. Grade and Quality: SB Prime 55 Joppa Taps.			
$6.75 per dz.	8-10-48		
70. Grade and Quality: SB Prime 60 Joppa Taps.			
$7.50 per dz.	8-10-48		
71. Grade and Quality: SB Prime 60 Extra-Large Joppa Taps.			
$8.65 per dz.	12- 3-48	+$ .10	1- 6-49
72. Grade and Quality: Fine 45 Joppa Taps.			
$3.25 per dz.	5-18-48		
73. Grade and Quality: #1 45 Joppa Taps.			
$3.50 per dz.	10-23-47		
74. Grade and Quality: A-45 Joppa Taps.			
$2.00 per dz.	10-31-49	−$ .35	11-23-49
75. Grade and Quality: Clear 55 Joppa Taps.			
$3.25 per dz.	3-28-46		

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76. Grade and Quality: 9/11 Iron Joppa Military Taps.			
$3.96 per dz.	5- 2-46		
77. Grade and Quality: 11/14 Iron Joppa Military Taps.			
$4.62 per dz.	5-26-46		
78. Grade and Quality: G. B. Heavy Joppa Taps.			
$3.75 per dz.	1-22-47		
79. Grade and Quality: Fine 5" Women's Flexible Taps.			
$3.00 per dz.	5-10-50		
80. Grade and Quality: Semi-fine 4½" Women's Flexible Taps.			
$1.95 per dz.	11-28-45	+$1.55	10-23-47
		−.25	9-29-48
81. Grade and Quality: Prime 4" Large WAC Taps.			
$3.45 per dz.	3-13-45		
82. Grade and Quality: Semi-fine 4" Large WAC Taps.			
$2.50 per dz.	3-13-45		
83. Grade and Quality: B Regular Women's Flexible Taps.			
$ .21 per dz.	3-28-46		
84. Grade and Quality: Prime 5" Women's Flexible Taps Split to 4".			
$3.65 per dz.	4- 7-50		

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Initial Price	Date	Price Change	Date
85. Grade and Quality: Prime 3½" Women's Flexible Taps.			
$2.25 per dz.	1- 5-45	+$ .25	1-22-46
		+ 1.90	11-19-46
		− .60	5- 1-47
		− .15	6- 3-47
		+ .10	7-31-47
		+ .75	3-18-48
		− .05	6-25-48
		− .45	12-15-48
		− .50	5-11-49
		− .05	6-27-49
		+ .40	8-31-50
86. Grade and Quality: Prime 4" Women's Flexible Taps.			
$2.25 per dz.	1- 9-45	−$ .15	9-20-45
		+ .20	11- 8-45
		+ .20	12-13-45
		+ 1.90	11-19-46
		− .60	9-11-47
		+ .20	12-11-47
		+ .50	3-18-48
		− .50	3-18-48
		+ .25	4-19-48
		+ .20	6-25-48
		− .45	11-17-48
		− .10	4-25-49
		− .15	5-11-49
		+ .10	8-31-49
		+ .15	1-26-50
87. Grade and Quality: Prime 4½" Women's Flexible Taps.			
$2.25 per dz.	2- 7-45	+$ .25	11-28-45
		+ 1.30	6- 3-47
		+ .65	10- 2-47
		− .45	11-17-48
		− .25	5-11-49
88. Grade and Quality: Prime 5" Women's Flexible Taps.			
$2.60 per dz.	10- 9-46	+$ .90	1-26-50
		+ .75	7-27-50

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89. Grade and Quality: Fine 3½" Women's Flexible Taps.			
$1.85 per dz.	5- 9-45	+$ .20	4-25-46
		+ 1.20	8-28-47
		+ .75	3-18-48
		− 1.00	6-27-49
90. Grade and Quality: Fine 4" Women's Flexible Taps.			
$2.30 per dz.	11- 8-45	+$1.75	11-19-46
		− .65	9-11-47
		+ .60	4-19-48
		− .50	4-25-49
		− .15	6-27-49
		+ .10	1-26-50
91. Grade and Quality: Fine 4½" Women's Flexible Taps.			
$2.30 per dz.	12-13-45	+$1.65	10- 2-47
		− .45	2-21-49
		− .15	8-16-49
		+ .40	7-19-50

Initial Price	Date	Price Change	Date
92. Grade and Quality: Semi-fine 3" Women's Flexible Taps.			
$1.00 per dz.	7-10-46	+$ .10	5-19-50
93. Grade and Quality: Semi-fine 3½" Women's Flexible Taps.			
$1.65 per dz.	2- 2-45	+$ .15	10- 3-45
		+ 1.45	11-19-46
		+ .35	4-10-47
		− .90	7- 9-47
		+ 1.15	3-18-48
		− .25	8- 3-48
		− .40	10-25-48
		− .35	6-23-49
		+ .15	9-30-49
		+ .10	6- 9-50
272			
94. Grade and Quality: Semi-fine 4" Women's Flexible Taps.			
$1.75 per dz.	1- 9-45	+$ .20	1-11-46
		+ 1.50	11-19-46
		+ .05	1- 9-47
		− .15	3-21-47
		− .45	5-26-47
		+ .60	10-23-47
		− .35	3-18-48
		+ .10	6-25-48
		− .25	3-28-49
		− .10	8-16-49
		+ .50	7-19-50
95. Grade and Quality: Clear 3½" Women's Flexible Taps.			
$1.15 per dz.	4-20-45	+$ .10	7-10-46
96. Grade and Quality: Clear 4" Women's Flexible Taps.			
$1.35 per dz.	8- 9-45		
97. Grade and Quality: Prime 55 Extra-Large Master of the Bark Taps.			
$6.30 per dz.	5- 5-47	+$ .45	5-25-48
98. Grade and Quality: Prime 60 Extra-Large Master of the Bark Taps.			
$6.85 per dz.	5- 5-47	+$1.25	3- 9-49
99. Grade and Quality: Prime 50 Master of the Bark Taps.			
$4.70 per dz.	4-11-47	−$ .25	5-15-47
100. Grade and Quality: Prime 55 Master of the Bark Taps.			
$5.30 per dz.	4-11-47	−$ .25	5-15-47
		+ 1.10	6-22-48
273			
101. Grade and Quality: Prime 60 Master of the Bark Taps.			
$5.75 per dz.	4-11-47	−$ .30	5-15-47
		− 1.60	8-15-47
		+ 2.55	3- 9-49
102. Grade and Quality: Prime 65 Master of the Bark Taps.			
$5.00 per dz.	11-17-48		
103. Grade and Quality: SB. Prime 50 Master of the Bark Taps.			
$2.90 per dz.	1-20-50	+$ .10	8- 3-50

Initial Price	Date	Price Change	Date
104. Grade and Quality: SB. Prime 55 Master of the Bark Taps.			
$4.25 per dz.	1-20-50	+$ .40	8- 3-50
		+ .25	8- 3-50
		− .25	7-10-50
		+ .25	8-10-50
105. Grade and Quality: SB. Prime 60 Master of the Bark Taps.			
$5.15 per dz.	1-20-50	+$ .35	8-10-50
		+ .25	8-10-50
106. Grade and Quality: SB. Prime 50 Extra-Large Master of the Bark Taps.			
$4.10 per dz.	1-26-50		
107. Grade and Quality: SB. Prime 55 Extra-Large Master of the Bark Taps.			
$4.95 per dz.	8-16-49	+$ .15	1-26-50
108. Grade and Quality: SB. Prime 60 Extra-Large Master of the Bark Taps.			
$5.75 per dz.	8-16-49	+$ .50	8- 3-50
		+ .25	8- 3-50
274			
109. Grade and Quality: Fine 45 Master of the Bark Taps.			
$3.20 per dz.	5- 5-47	−$ .25	7- 7-47
		+ .25	7- 7-47
110. Grade and Quality: Fine 50 Master of the Bark Taps.			
$4.25 per dz.	4-23-47	−$ .25	6-19-47
		− .10	6-27-47
		− .75	9- 1-49
111. Grade and Quality: Fine 55 Master of the Bark Taps.			
$4.9. per dz.	4-23-47	−$ .25	7-28-47
		+ .95	3- 9-49
		− 1.40	9- 1-49
112. Grade and Quality: Fine 60 Master of the Bark Taps.			
$5.30 per dz.	4-11-47	+$1.00	3- 9-49
113. Grade and Quality: Clear 45 Master of the Bark Taps.			
$2.45 per dz.	4-29-47	−$ .35	5-19-47
		+ .15	9-17-47
114. Grade and Quality: Clear 50 Master of the Bark Taps.			
$3.35 per dz.	4-29-47	−$ .25	7- 7-47
115. Grade and Quality: Fine 55 Extra-Large Master of the Bark Taps.			
$5.65 per dz.	7- 7-47	+$ .65	5- 3-48
116. Grade and Quality: Fine 60 Extra-Large Master of the Bark Taps.			
$7.20 per dz.	6- 3-48		
275			
117. Grade and Quality: Clear 55 Extra-Large Master of the Bark Taps.			
$3.00 per dz.	11-17-48		
118. Grade and Quality: SB. Prime 55 Tulip Flexible Taps.			
$4.75 per dz.	4-27-50		
119. Grade and Quality: SB. Prime 55 Extra-Large Tulip Flexible Taps.			
$5.75 per dz.	6-23-50		

Initial Price	Date	Price Change	Date
120. Grade and Quality: SB. Prime 60 Extra-Large Tulip Flexible Taps.			
$6.25 per dz.	6-23-50		
121. Grade and Quality: Prime 40 Men's Flexible Taps.			
$4.00 per dz.	8-19-49		
122. Grade and Quality: Prime 45 Men's Flexible Taps.			
$4.15 per dz.	8-16-49		
123. Grade and Quality: Fine 35 Men's Flexible Taps.			
$3.75 per dz.	7-16-48		
124. Grade and Quality: Fine 40 Men's Flexible Taps.			
$4.00 per dz.	7-16-48	−$ .40	8- 5-49
125. Grade and Quality: Fine 45 Men's Flexible Taps.			
$3.60 per dz.	8- 5-49		
126. Grade and Quality: Fine 55 Men's Flexible Taps.			
$6.00 per dz.	2- 3-50		
276			
127. Grade and Quality: Semi-fine 55 Men's Flexible Taps.			
$4.50 per dz.	2- 3-50		
128. Grade and Quality: SB. Prime 40 Sanded Taps.			
$3.65 per dz.	10- 2-47		
129. Grade and Quality: SB. Prime 55 Grippo-tite Grain Men's Taps.			
$4.25 per dz.	6- 9-50		
130. Grade and Quality: Fine 40 Buffed and Treated Taps.			
$2.50 per dz.	4- 7-50		
131. Grade and Quality: Fine 45 Buffed and Treated Taps.			
$2.75 per dz.	3-10-50		
132. Grade and Quality: Prime 40 Buffed and Treated Taps.			
$3.00 per dz.	2-14-50		
133. Grade and Quality: Prime 45 Buffed and Treated Taps.			
$3.25 per dz.	5-19-50		
134. Grade and Quality: Prime 55 Tulip Flexible Taps.			
$6.00 per dz.	4-27-50		
135. Grade and Quality: Prime 55 Extra-Large Tulip Flexible Taps.			
$7.00 per dz.	6-23-50	+$ .15	8-31-50
277	C. Strips		
1. Grade and Quality: Prime 13" Extra Heavy MOB Strips.			
$ .98 per lb.	6-23-48	−$ .18	6-23-49
		+ .03	7-19-50
2. Grade and Quality: Prime 13" Heavy MOB Strips.			
$ .98 per lb.	8-11-48		
3. Grade and Quality: Fine 13" Heavy MOB Strips.			
$ .93 per lb.	6-23-48	−$ .05	8-16-48
		+ .02	2- 4-49

Initial Price	Date	Price Change	Date
4. Grade and Quality: Fine 13" Medium MOB Strips.			
$ .89 per lb.	6-23-48	−$ .06	3-18-49
		− .18	2- 3-50
5. Grade and Quality: Fine 13" Extra Heavy MOB Strips.			
$ .88 per lb.	12-10-48		
6. Grade and Quality: X Prime 13" Heavy Ottawa Strips.			
$ .85 per lb.	4-30-47		
7. Grade and Quality: Y-Fine 13" Medium Ottawa Strips.			
$ .82 per lb.	9-18-47	−$ .02	5- 3-48
8. Grade and Quality: Y-Fine 13" Heavy Ottawa Strips.			
$ .81 per lb.	4-22-47	−$ .02	4-30-47
		− .04	6-17-47
		+ .12	9-18-47
		+ .03	5- 3-48
9. Grade and Quality: Y-Fine 13" Extra Heavy Ottawa Strips.			
$ .80 per lb.	8-11-47	+ .12	10-16-47
10. Grade and Quality: X-Prime 9" Heavy Ottawa Strips.			
$ .97 per lb.	10-16-47		
11. Grade and Quality: B 8½" Heavy Ottawa Strips.			
$ .50 per lb.	8- 3-45	+$ .22	4-22-47
278			
12. Grade and Quality: B 13" Heavy Ottawa Strips.			
$ .75 per lb.	4-30-47	−$ .04	6-17-47
13. Grade and Quality: X-Prime 13" Extra-Heavy Ottawa Strips.			
$1.00 per lb.	10-24-47		
14. Grade and Quality: SB Prime 9" Heavy Joppa Strips.			
$ .80 per lb.	4-14-48	−$ .05	1-26-50
15. Grade and Quality: 13" Joppa Military Strips.			
$ .65 per lb.	4- 4-46		
16. Grade and Quality: B 13" Heavy Old Stock Joppa Strips.			
$ .90 per lb.	11-13-47		
17. Grade and Quality: SB Prime 8½" Heavy Old Stock Joppa Strips.			
$ .90 per lb.	11-13-47		
18. Grade and Quality: A 6½" Heavy Flexible Strips.			
$ .54 per lb.	2-16-45		
19. Grade and Quality: Fine 6½" Heavy Flexible Strips.			
$ .60 per lb.	2-16-45		
20. Grade and Quality: Fine 6½" Medium Flexible Strips.			
$ .58 per lb.	4- 4-46		
21. Grade and Quality: Prime 6½" Heavy Flexible Strips.			
$ .62 per lb.	2-16-45		
22. Grade and Quality: Fine 7" Medium Flexible Strips.			
$ .85 per lb.	8-18-49		

Initial Price	Date	Price Change	Date
10. Grade and Quality: 3½" Ottawa Toplift Strips.			
$ .62	5- 9-47	+$ .02	9-24-47
11. Grade and Quality: 4" Ottawa Toplift Strips.			
$ .65 per lb.	4-15-48		

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12. Grade and Quality: 4½" Toplift Strips.			
$ .60 per lb.	1-26-50		
13. Grade and Quality: Women's Y Toplifts (all sizes).			
$ .50 per lb.	11-17-48		
14. Grade and Quality: Special Women's Toplifts.			
$ .10 per lb.	11-17-48		
15. Grade and Quality: Size 0 Prime 10-11 Iron Women's Toplifts.			
$ .20 per lb.	2-16-49		

285-287 III. The following are the prices, and the invoice dates of all changes in price, which were charged by this defendant to Reick-Langendorf Company for each item of shoe findings or shoe materials since January 1, 1945 to date of plaintiffs' interrogatories:

A. Taps

Initial Price	Date	Price Change	Date
1. Grade and Quality: Prime 55 Joppa Taps.			
$6.50 per dz.	3- 6-52		

B. Offal

1. Grade and Quality: Heavy Wide Finding Butts.			
$ .46 lb.	8-20-51		

ARMOUR AND COMPANY, an Illinois Corporation,

By J. R. MALCOLM,

Assistant Sales Manager,
Armour Leather Company,
a division of Armour and Company.

Duly sworn to by J. R. Malcolm; jurat omitted in printing.

288 EXHIBIT "I" TO ANSWER

In the
United States District Court
for the Northern District of Illinois,
Eastern Division

No. 50 C 229

WILLIAM ROHLFING, ET AL., PLAINTIFFS,

vs.

CAT'S PAW RUBBER CO., INC., ET AL., DEFENDANTS

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE AMENDED COMPLAINT

Plaintiffs manifestly have disregarded the order of the Court entered June 26, 1951, in that they have not remedied the defective joinder of plaintiffs, defendants, and claims. Furthermore, trial of this case will be extremely difficult as the pleading now stands.

ORDER OF THE COURT

The order of the Court was clear. It reads in pertinent part:

> "The joint and several motions to drop certain plaintiffs and defendants as misjoined parties from certain claims and to sever such claims is sustained and said claims are to be set forth in separate counts."

289 PRIOR MOTIONS OF DEFENDANTS SUSTAINED BY THE COURT

The motions which this Court sustained requested the court "to drop certain plaintiffs and defendants as misjoined parties from certain claims and to sever such claims." The motions are spelled out in more detail in defendants' former brief, together with citations of authorities (pp. 39-58). They are briefly summarized as follows:

(A) The motion to drop all other plaintiffs from the claims of plaintiff Rohlfing, and to sever such claims.

1. Plaintiffs' claims are not founded upon the same series of transactions.

2. Plaintiffs' claims do not involve a common question of law or fact.

(B) The motion to drop misjoined defendants and to sever the claims not pertinent to them.

1. The price discrimination claims.

(a) Each claim founded upon alleged price discrimination involves different defendants and defendants not involved in each such claim should be dropped from it.

(b) The price discrimination claims alleged arise out of different series of transactions and involve different questions of law and fact, and each should be severed from the remainder of the complaint.

2. The common sales organization claims.

(a) The claims alleged against defendant manufacturers of rubber goods and shoe polish involve a group of defendants different from those charged elsewhere in the complaint and all
290 other defendants should be dropped therefrom.

(b) The common sales organization claims arise out of a series of transactions and involve questions of law and fact different from any other claims alleged in the complaint and should be severed from the remainder of the complaint.

It is not necessary to repeat the arguments and authorities which appear in our former brief (pp. 39-58). A comparison of the original and amended complaints will be sufficient.

THE AMENDED COMPLAINT DOES NOT COMPLY WITH THE COURT'S ORDER

Originally there were eighty-seven (87) plaintiffs. There are now one hundred four (104). In the original complaint there were twenty-five (25) defendants. There are now twenty-one (21). Some defendants have been dropped from

the case for jurisdictional and other reasons unrelated to the present misjoinder issues.

The original complaint contained one (1) Count. The amended complaint contains one hundred five (105). It might seem, therefore, that plaintiffs have conformed to the Court's order. The one hundred five (105) Counts, however, are but a flimsy facade, as we shall demonstrate. For purposes of analysis it is convenient to divide the Counts of the amended complaint into two groups, Count I, and Counts II through CV.

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Count I

Count I is substantially the same as plaintiffs' entire original complaint. No plaintiffs and no defendants have been dropped notwithstanding the Court's clear mandate; nor have any claims been severed. Eighty-six (86) of the eighty-seven (87) plaintiffs in the original complaint and their singularly different claims once again are improperly joined. Indeed there are now eighteen (18) additional plaintiffs. This Court has already held that the twenty-one (21) defendants were improperly joined in the original complaint. Once again they are improperly joined in Count I of the amended complaint.

The charges made in Count I are substantially the same as those of the original complaint. In fact the language, arrangement and paragraphing are almost identical. As in the original complaint there appear to be at least five separate and distinct classes of claims alleged in Count 1:[1] (1) The monopolization claims [Paragraph 13(a)]; (2) The rebate conspiracy claims [Paragraph 13(b)]; (3) The price discrimination claims [Paragraph 13(b)]; (4) The price fixing claims [Paragraph 17(a)]; and (5) The common sales organization claims [Paragraphs 17(b) and (c)].

A. Continuing Misjoinder of Plaintiffs and Claims

Count I of the amended complaint contains the same misjoinder of plaintiffs and claims. Since Count I is substantially the same as the original complaint, it would serve no purpose to discuss this subject at length. Our arguments

[1] Paragraph references are to the original complaint and Count I of the amended Complaint.

have been fully presented in our former brief (pp. 41-45). However, a few remarks are appropriate.

The right of action of each plaintiff arises out of "a unique series of transactions"[2] his own purchases
292 of merchandise manufactured or dealt in by defendants. Injury to a particular plaintiff is the essential element of an action for treble damages under the Anti Trust Laws.[3] In sustaining our motions to the original complaint this Court said:[4]

> "It is clear that the injury to each plaintiff must be premised on individual facts arising between the plaintiff and the defendant, that this injury to the plaintiff could arise solely from circumstances of this relationship with the defendants. While the rule provides that a plaintiff 'need not be interested in obtaining . . . all the relief demanded,' such right to relief must arise from the same transaction or series of transactions in which all the joined parties were engaged with the defendants.
>
> "For these reasons the court sustains the defendants' motion to sever misjoined claims and parties."

As was pointed out by Judge Sullivan in considering the claims presented in the complaint in the *Hipps* case:[5]

> "Each plaintiff's claim under the Clayton Act and the Robinson-Patman Act for price discrimination is entirely separate from and unrelated to any other plaintiff's similar claim. The facts as to the amount of milk purchased, the amount of rebate paid, the services provided . . . , the dates of purchase, the effect on competition, the damages sustained, etc., vary, and the legal liability arising from such facts will also vary. *As a*

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[2] See *Hipps* v. *Bowman Dairy Company*, Memorandum Opinion, App. A, p. ix in Brief of certain Defendants in Support of Joint and Several Motions, *Rohlfing, et al.* v. *Cat's Paw Rubber Co., Inc. et al.*

[3] Ibid, p. x.

[4] *Rohlfing, et al.* v. *Cat's Paw Rubber Co., Inc., et al.*, 99 F. Supp. 886, 894 (D. C. N. D. Illinois, E. D., 1951).

[5] *Supra*, fn. 3, p. vii.

consequence no two plaintiffs' claims involve common questions of law or fact as to the higher priced sales of them." (Emphasis supplied.)

B. Continuing Misjoinder of Defendants and Claims

Count I of the amended complaint, likewise, has not remedied the misjoinder of defendants and claims.

It is charged in paragraph 13(b) of both the *original* and *amended* complaints that defendant manufacturer sold to defendant department or chain stores "at prices far below the prices charged to the plaintiffs herein for the same or similar merchandise . . ." No charge is made against the defendant finders in connection with any of the price discrimination claims. The lower priced sales were made, it is alleged, by defendant manufacturers to defendant stores, the higher priced sales, by such manufacturers direct to plaintiffs. The defendant finders are not alleged to have been in any connected with these transactions, yet these defendants have not been dropped from the price discrimination claims in Count I of the amended complaint, notwithstanding the plain command of the Court's order.

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Secondly, plaintiffs do not allege claims against defendant stores arising out of the alleged discriminations in prices by defendant manufacturers, but these defendants likewise have not been dropped from the price discrimination claims.

Coming to the price discrimination claims alleged against defendant manufactuers, it is clear that the Court's order has once again been flouted. In alleging a price discrimination claim against a particular defendant manufacturer each plaintiff continues to join all other defendant manufacturers.

In Count I a price discrimination claim made by one plaintiff against a particular defendant manufacturer is joined with another price discrimination claim made by another plaintiff against the same defendant manufacturer. The claim one plaintiff might have against a particular defendant is entirely unrelated to that which another plaintiff might have. Similarly, distinct price discrimination claims against different defendants by the same plaintiffs also are joined, although each of these claims arises out of "a unique series of transactions." There are one hundred four (104)

plaintiffs. There are ten (10) defendant manu-
294 facturers against whom price discrimination charges are made. Simple multiplication reveals that one thousand forty (1040) separate and unrelated price discrimination claims are improperly joined.

In addition plaintiffs have failed to remedy the misjoinder which this Court found in the common sales organization claims. Paragraphs 17(b) and 17(c) of the original and amended complaint are identical except for inconsequential variations in phrasing. Both complaints charge in paragraphs 17(b) and 17(c) that defendant manufacturers of rubber goods and polish conspired to and did maintain a common sales organization and refused to sell merchandise to the plaintiffs upon terms as favorable as those given defendant stores. Plaintiffs, however, have completely failed to conform to the order sustaining the motions directed to the common sales organization claims. As we have observed Count I is merely a repetition of the original complaint. No one has been dropped, plaintiffs or defendants. No claims have been severed. By their very language the common sales organziation claims relate only to manufacturers of rubber goods and shoe polish. All other defendants should be dropped and all other claims should be severed. The argument is fully developed in our former brief (pp. 54-58).

Counts II to CV

Counts H to CV are subject to the same objections with respect to misjoinder of defendants and claims as are the original complaint and Count I of the amended complaint. It is true that each Count from II through CV has one (1) plaintiff, but each Count has multiple defendants. The number of defendants, by each plaintiff's statement, is indefinite because each plaintiff states in paragraph 4, Counts II through CV, that he "is unable to designate which of
295 the defendants mentioned in paragraph 3 (Table I), paragraph 4 (Table II), and paragraph 5 (Table III), ... sold merchandise to him during the five (5) years preceding the filing of the complaint."

Each plaintiff goes on to reincorporate all of the allegations of Count I, including the price discrimination claims. It is clear, however, that the basis of each plaintiff's case is an alleged violation of the Robinson-Patman Act. Each

plaintiff makes this plain when he alleges that he wishes to amend the amended complaint to omit those defendant manufacturers from whom he made no purchases (Par. E, Counts II through CV). Each has specifically included as defendants in his respective Count all "chain store" defendants and "finder" defendants. But as has already been demonstrated in our analysis of Count I, these defendants have no place in the price discrimination claims of these Counts. Accordingly, they should be dropped and other claims against them severed.

Since each plaintiff incorporates by reference all the allegations of Count I, the defects of Count I relating to the price discrimination claims against defendant manufacturers and the defects relating to the common sales organization claims are likewise incorporated. As we have pointed out, certain defendants and claims have not been dropped and severed. Consequently Counts II through CV do not conform to the Court's order.

COMPLEXITY OF TRIAL

It will be next to impossible for this Court to try this case, as the pleading now stands. The trial will be reminiscent of a "battle royal". There are one hundred four (104) plaintiffs and ten (10) defendant manufacturers. Considered as a price discrimination case there are one thousand forty (1,040) separate, distinct and unrelated price discrimination claims in Count I. There may possibly be ten (10)
296 in each Count from Count II through Count CV. Each plaintiff must show not only the price at which purchases were made from a manufacturer by a defendant department or chain store in competition with him, he must also show that he bought goods of a like grade and quality from the same seller at a higher price, and that the effect thereof was to "substantially . . . lessen competition . . . or . . . prevent competition" between him and such department or chain store. Evidence as to any particular transaction is only admissible as to the defendant who sold the merchandise and is only admissible in favor of the plaintiff who bought it. This evidence is irrelevant as to other plaintiffs and defendants, particularly as to those defendants against whom no price discrimination charges have been made. The trial would be *fantastically complicated*. Joint trial of these

hundreds of unrelated claims would result in interminable delay and impose needless burdens on the Court. If there is to be any semblance of order, the claims of each plaintiff against a particular defendant must be tried separately.

Similar difficulties arise if this is treated as a conspiracy case. No plaintiff can introduce evidence of his damage until a conspiracy is established. If a conspiracy is established evidence of one plaintiff's damages has no relevancy to the damages of another plaintiff. Proof of damage to all plaintiffs could not be handled in the course of the trial without chaos. This would be particularly true if there is a jury trial. There will not be a "speedy . . . determination" of issues.

297 CONCLUSION

For the reasons stated in this memorandum the Court should strike plaintiffs' amended complaint because it does not comply with the Court's order.

Respectfully submitted,

SIMON E. SOBELOFF,
GEORGE L. SIEGEL,
Attorneys for Cat's Paw Rubber Co., Inc., and Hollite Manufacturing Co., a Corp.

LOY N. MCINTOSH,
KENNETH B. KIRK,
ALFRED E. SAWYER,
Attorneys for Biltrite Rubber Co., Panther Panco Rubber Co., and Essex Rubber Co.

JACK I. LEVY,
Attorney for Howes Leather Company, Inc.

H. TEMPLETON BROWN,
EDMUND A. STEPHAN,
Attorneys for Griffin Mfg. Co.

CHARLES LEDERER,
HAROLD C. ADSIT,
DANIEL J. GLUCK,
Attorneys for Sears, Roebuck & Co.

HARRY Z. PEREL,
Attorney for K. Kaplan Sons & Co., and Rudolph E. Kaplan, Eli Kaplan, J. Gilbert Kaplan, Ruben Chupak, d/b/a Reick Langendorf Co.

HENRY JUNGE,
Attorney for Dan Grippo, d/b/a Grippo & Co.

I. LEONARD KOVITZ,
Attorney for Jack Klinger, d/b/a A. Leveton & Co.

JOHN A. BARR,
Attorney for Montgomery Ward & Co., Inc.

JOHN T. CHADWELL,
RICHARD M. KECK,
RICHARD W. MCLAREN,
Attorneys for United States Rubber Company

WEYMOUTH KIRKLAND,
A. LESLIE HODSON,
WALTER E. TINSLEY,
KARL F. NYGREN,
FREDERICK R. BAIRD,
ARTHUR F. RACKERBY,
Attorneys for Armour and Company

ABRAHAM ZEMLOCK,
Attorney for Knomark Mfg. Co.

STANFORD CLINTON,
JAY A. PRITZKER,
Attorneys for Goldblatt Bros., Inc.

NATHAN S. BLUMBERG,
MARVIN GREEN,
Attorneys for Public Shoe Service Corp.

ABRAHAM W. BRUSSELL,
MILTON I. SHADUR,
ERWIN H. GOLDBERG,
Attorneys for South Clark Street Shoe Repair, Inc., d/b/a Sam The Shoe Doctor

JAMES E. S. BAKER,
HENRY R. PRESTON,
Attorneys for Wieboldt Stores, Inc.

William N. Brady,
Eugene P Meegan,
Attorneys for O'Connor & Goldberg

Of Counsel:

Snyder, Chadwell & Fagerburg,
Kirkland, Fleming, Green, Martin & Ellis,
Mayer, Meyer, Austrian & Platt,
Sonnenschein, Berkson, Lautmann, Levison & Morse
Brown, Fox and Blumberg,
Lederer Livingston, Kahn & Adsit,
Gann, Secord, Stead & McIntosh,
Sidley, Austin, Burgess & Smith
Arvey, Hodes & Mantynband,
Pritzker, Pritzker and Clinton,
Goldberg, Devoe & Brussell.

298-299 In the United States Court of Appeals
for the Seventh Circuit

No. 11473, Original

Ex Parte: In the Matter of
Howes Leather Company, Inc., petitioner

Motion for Leave to File Petition for Mandamus—
Filed May 26, 1955

Petitioner, Howes Leather Company, Inc. respectfully moves this Court:

1. For leave to file the petition submitted herewith for a writ of mandamus.

2. That a rule be entered and issued directing the Honorable Walter J. LaBuy, Judge of the United States District Court for the Northern District of Illinois, to show cause why a writ of mandamus should not issue against him in accordance with the prayer of said petition and why petitioner should not have such other and further relief as may be just and proper.

Dated May 23, 1955

Howes Leather Company, Inc.
Jack I. Levy, *its attorney*
77 West Washington Street
Chicago, Illinois
Telephone: Andover 3-6400

300 In the United States Court of Appeals
for the Seventh Circuit

[Title Omitted]

PETITION FOR WRIT OF MANDAMUS

To the Honorable Judges of the United States Court of Appeals for the Seventh Circuit:

1. Your petitioner [HOWES LEATHER COMPANY, INC.] (hereinafter called "Howes") is a Delaware corporation with its principal place of business at Boston, Massachusetts.

2. Howes is a party defendant in an action instituted [in the United States District Court for the Northern District of Illinois on June 12, 1950 entitled "*Norman P. Shaffer, et al vs. United States Rubber Co., et al*", No. 50 C 844] assigned to the calendar of the Honorable Walter J. Labuy, Judge of said District Court.

3. In said action, the plaintiffs seek to obtain damages and equitable relief by reason of the defendants' alleged violations of certain antitrust laws of the United States.

4. Said action came on for trial on February 23, 1955, at which time the plaintiffs moved for a continuance of the trial of said action. Thereupon, Judge LaBuy suggested that the action be referred for trial to a master and asked counsel for all parties in the case to appear before
301 him in chambers at 9:30 A.M. the next day, February 24, 1955, to discuss the matter of referring the action to a master. At that time, Judge LaBuy, notwithstanding objection made by your petitioner and others, stated that he would refer the action to a master for trial and on said date entered an order of reference, copy of which is hereto attached, marked "Exhibit A" and hereby made a part hereof.

5. Said order of reference was and is in violation of the Federal Rules of Civil Procedure in such case made and provided.

6. On April 29, 1955, all parties to said action, plaintiffs and defendants, moved the court to vacate said order of reference. This joint motion of all parties was denied by Judge LaBuy on May 6, 1955.

7. Notwithstanding the provision in said order of reference, the action did not proceed to trial on May 2, 1955.

Pursuant to a notice received from Master Manuel E. Cowen, to whom said action was referred, the parties, by their attorneys, appeared at his office on May 18, 1955. He indicated that the case entitled "*William Rohlfing, et al vs. Cat's Paw Rubber Co., et al*", No. 50 C 229, referred to said master by said judge simultaneously with the *Shaffer* action, would proceed to trial first and no action was taken at said meeting with regard to the *Shaffer* case.

8. As set forth in a petition for writ of mandamus filed in this court by your petitioner and Montgomery Ward & Co., Incorporated, concerning the reference in the *Rohlfing* case, to which petition for mandamus reference is
302 hereby made, the master intends to proceed with the trial of the *Rohlfing* case pursuant to the order of reference notwithstanding the objection of your petitioner. Your petitioner must, therefore, assume that the master will act similarly with respect to trial of the *Shaffer* case and therefore asks this court to issue a writ of mandamus to insure that the *Shaffer* case will be tried by the Court.

WHEREFORE, petitioner prays that a writ of mandamus issue out of this court directed to the said Walter J. LaBuy, Judge of the District Court of the United States for the Northern District of Illinois, commanding him as such Judge to vacate said order of reference entered by him on February 24, 1955 in the *Shaffer* case, and to do and perform such other acts and things as may be necessary and proper in the premises.

Dated May 23, 1955.

HOWES LEATHER COMPANY, INC.
JACK I. LEVY, *its attorney*
77 West Washington Street
Chicago, Illinois
Telephone: ANdover 3-6400

303 EXHIBIT "A" TO PETITION

In the United States District Court
for the Northern District of Illinois
Eastern Division

No. 50 C 844

NORMAN P. SHAFFER, ET AL., PLAINTIFFS,

vs.

UNITED STATES RUBBER CO., ET AL., DEFENDANTS

ORDER OF REFERENCE TO MASTER

This cause coming on to be heard both upon the trial call of this Court and upon the motion of plaintiffs to reset the case for trial at a later date, and

The Court, being confronted with an extremely congested calendar, and finding that exceptional conditions exist for this reason, is of the opinion that this case can be most adequately and intelligently presented to the Court for ultimate disposition by reference to a Master.

IT IS THEREFORE ORDERED that this cause be and the same is referred to Manuel E. Cowen, Esquire, as Master, to take evidence and to report the same to this Court, together with his findings of fact and conclusions of law.

IT IS FURTHER ORDERED that the Master shall commence the trial of this cause on Monday, May 2, 1955, at his office at One North LaSalle Street, Chicago, Illinois, or at such other time thereafter as he, in his discretion, may determine to be not in conflict with the time and hearing requirements of the case entitled "Rohlfing v. Cat's Paw Rubber Co.," numbered 50 C 229, being earlier in point of time and involving different parties, which was this day similarly referred; and the Master, once commencing trial in the instant case, shall thereafter continue with all reasonable diligence.

304-305 IT IS FURTHER ORDERED that the Master may at any time require the parties to supply security for the costs of this reference.

IT IS FURTHER ORDERED that the Master shall have all of

the powers set forth under Rule 53 of the Federal Rules of Civil Procedure.

ENTER: —— ——
Judge

Dated: February 24, 1955.

306 United States Court of Appeals
For the Seventh Circuit

[Title omitted]

Before

Hon. F. RYAN DUFFY, *Chief Judge,* Hon. WALTER C. LINDLEY, *Circuit Judge.*

ORDER GRANTING MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS AND RULE TO SHOW CAUSE—May 26, 1955

It is ordered by the Court that the motion of Howes Leather Company, Inc., for leave to file a petition for writ of mandamus be, and the same is hereby, allowed and the said petition for writ of mandamus be filed with the Clerk of this Court.

It is further ordered that the respondent show cause, if any, on or before fifteen (15) days from this date, why the said petition for writ of mandamus should not be granted.

307 [File endorsement omitted]

In the United States Court of Appeals
for the Seventh Circuit

No. 11473 Original

HOWES LEATHER COMPANY, INC., PETITIONER,

vs.

THE HON. WALTER J. LABUY, UNITED STATES DISTRICT JUDGE, RESPONDENT

ANSWER OF RESPONDENT TO PETITION FOR WRIT OF MANDAMUS—Filed June 10, 1955

Comes now the respondent, and for his answer to the petition for a writ of mandamus avers as follows:

I

REFERAL OF CASL TO MASTER IN CHANCERY

1-2. Respondent incorporates by reference as if fully set forth herein paragraphs 1-2 of his answer filed in Case No. 11472 Original.

II

THE REASONS UNDERLYING AND SUPPORTING THE REFERRAL TO A MASTER IN CHANCERY FOR TRIAL

3-4. Respondent incorporates by reference as if fully set forth herein paragraphs 3-4 of his answer filed in Case No. 11472 Original.

A

The Complicated Nature of the Case

5. The case of *Norman P. Shaffer, et al* vs. *United States Rubber Co., et al*, 50 C 844, was filed in the United States District Court of the Northern District of Illinois on
308 June 12, 1950, and assigned to my calendar. The ten original plaintiffs were wholesalers ("finders") of shoe repair materials selling to shoe repairmen and other users. The twenty original defendants were either manufac-

turers of shoe repair materials and related items or wholesalers of such materials.

6. After a lengthy series of motions directed to pleading issues, plaintiffs filed their second amended complaint (see Exhibit A to Case No. 11473, being the docket sheet reflecting the motions and dispositions thereof, and Exhibit B, the second amended complaint filed by the plaintiffs).

7. The second amended complaint (Exhibit B) consists of nine counts (one for each plaintiff), each of which seeks relief against the named defendants and charges such defendants with the following claimed violations of the anti-trust laws:[1]

(a) That the defendants entered into a combination and conspiracy in violation of Section 1 of the Sherman Anti-trust Act;

(b) That the defendants contracted, combined and conspired to monopolize and to attempt to monopolize the sale of shoe repair supplies and related items made the subject matter of the second amended complaint;

(c) That the defendants conspired to violate Section 3 of the Robinson-Patman Act through the giving
309 and receiving of claimed illegal rebates;

(d) That the individual defendants violated Section 2(a) of the Robinson-Patman Act by reason of sales to the wholesaler defendants and chain stores at alleged discriminatory prices.

8. Each of the defendants named in the second amended complaint filed answers responsive to the claims advanced by the plaintiffs in such complaint (see e.g., Answer of Armour Co., Exhibit C to Case No. 11473; Answer of Griffin Manufacturing Co., Exhibit D to Case No. 11473; and Answer of Don Grippo, Exhibit E to Case No. 11473).

9. The plaintiffs claim of violation of Section 1 of the Sherman Anti-trust Act raises factual issues of proof such as establishing a conspiracy to fix and maintain non-competitive prices and to sell only to preferred buyers on a given product or products within a defined market area and result-

---

[1] By reason of various dismissals, there are now six plaintiffs in the *Shaffer* case, and six defendants.

ing in injury of a measurable amount to each of the party plaintiffs.

10. The plaintiffs' claim of violation of Section 2 of the Sherman Act raises complex issues of proof and market involved, the establishment of the claimed conspiracy in violation of Section 2, injury to the individual plaintiffs from the asserted violation of that section, and the amount of damage (if any) incurred by plaintiffs from the asserted violations of the Act.

11. The claims of the plaintiffs of violation of Section 3 of the Robinson-Patman Act raise issues such as establishing a conspiracy involving the purchase and sale of merchandise "of like grade, quality, and quantity" and
310 that pursuant to such conspiracy some or all of the defendants granted, received, or assisted in the granting or receipt of a discriminatory rebate, and by reason of which the plaintiffs suffered injury in a measurable amount.

12. The claims of the plaintiffs with respect to Section 2(a) of the Robinson-Patman Act raise issues such as proof by the individual plaintiffs that the price to a competing wholesaler of goods of like grade or quality by the same seller was discriminatorily lower than the price charged the plaintiff with resulting injury to the plaintiff. The defenses of certain of the defendants, among other things, raise the issue of "like grade or quality" of merchandise, the defense of cost justification, and the defense of meeting competition.

13. The difficulties inherent in the many factual and trial issues raised by the pleadings were well described by defendants in their memorandum in support of a motion to strike the amended complaint, which is set forth in paragraph 13 of my answer in Case No. 11472, and which I shall not repeat here.

14. The second amended complaint and the answers filed in response to it create, as I have briefly indicated above, numerous factual issues relating to practically every major aspect of the anti-trust laws. In addition to and beyond those items which I have mentioned above, the Robinson-Patman claims will necessitate the examination of books, records, voluminous interrogatories, and depositions relied on by the parties to support their contentions. Furthermore, as needs no emphasis, claimed violations of Section 2(a)

of the Robinson-Patman Act necessarily proceed on an individual basis with each plaintiff seeking to estab-
311 lish his individual claim of violation of that act. This will require a study and analysis of numerous transactions through which the individual plaintiffs will seek to establish their claim of violation of the act, as well as the defenses of defendants including the cost justification defenses of certain of the defendants.

Thus the evidence which the pleadings indicate would be advanced by the plaintiffs and the defense evidence to be relied on by the defendants will require and entail an analysis and understanding of extremely detailed lists of accounts, figures, transactions, accounting summaries and similar analyses. As an example of the accounting complexity I have attached as Exhibit F, the Answer of *Howes Leather Company, Inc.* to the interrogatories propounded to it by the plaintiff.

The plaintiffs claim statutory treble damages, an injunction, and an "accounting" of the discriminatory price differentials. The relief sought will further require the detailed analysis of numerous transactions, the examination of many books of accounts, and accounting summaries in order to determine the relief, if any (and the amount of that relief), if the evidence supports plaintiffs' claims.

B

Trial Calendar Congestion

15-18. Respondent incorporates by reference as if fully set forth herein paragraphs 15-18 of his answer filed in Case No. 11472 Original.

C

312-313 *Estimated Length of Trial of Shaffer, et al vs. United States Rubber Co., et al*

19-21. Respondent incorporates, by reference as if fully set forth herein paragraphs 19-21 of his answer filed in Case No. 11472 Original.

III

Proceedings Subsequent to the Referral of the Cases to a Master in Chancery

22-27. Respondent incorporates by reference as if fully set forth herein paragraphs 22-27 of his answer in Case No. 11472 Original.

IV

Conclusion

28. For the reasons above stated and relied on respondent respectfully submits that the order of reference heretofore entered by him was proper and authorized by Rule 53 of the Federal Rules of Civil Procedure, and that the petition for the writ of mandamus should be denied and the writ discharged.

Respectfully submitted,

Walter J. LaBuy, *Respondent*

Dated this — day of June, 1955.

(Here follow 3 photos, side folios 314-316)

220A

Exhibit A to Answer

DOCKET ENTRIES

50 C 844 CORRECTED PAGE OF ADDRESSES OF ATTORNEYS AS OF APRIL, 1955

SEND NOTICES

Attorneys for plaintiff

FRANCIS HEISLER
7 S. Dearborn St.

GEORGE N. KOTIN
77 W. Washington St.

HARRY BECKER
111 W. Washington St.

RICHARD ORLIKOFF
100 W. Monroe

Attorneys for defendant (For Armour & PandaCorp.)

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS
33 N. LaSalle St.

(For Howes LeatherCo. Inc.)
Berkson, Lautmann, Levinson, & Morse
77 W. Washington

~~(For U.S.Leather Co.)~~
~~LOUIS GOLDMAN~~
~~30 N. Michigan Ave.~~

(For Dan Grippo d/b/a Grippo & Co.
HENRY J. JUDGE
111 W. Monroe

JACK KLINGER
9625 Emerson Ave.
Miami, Florida (Send ntc -ord. J. Perry)

I. Leonard Kovitz
100 W. Monroe St.

~~(For A. Loveton Co.)~~ Dis. 5/6/55
~~Brown, Fox, Blumberg & Mathews~~
~~Room 2057, 231 S. LaSalle St.(2)~~
~~Re 6-9100~~

(For Griffin Mfg. Co.)
Roger W. Barrett
Patrick W. O'Brien
~~Mayer, Meyer, Austrian~~
Mayer, Friedlich, Spiess, Tierney, Brown and Platt
231 S. La Salle St. (2)

(314)

50 C 844

ATTORNEYS FOR PLAINTIFF

FRANCIS HEISLER AND ~~RICHARD GELTKOFF~~
7 S. Dearborn St.
Chicago,

~~SHOWAN H.~~ KOTIN
77 W. Washington St.

HARRY ~~BECKER~~
111 W. Washington St.
FR. 2-4552
(For E.J. Schmidt and Co.)

50 C 844

ATTORNEYS FOR DEFENDANTS

KIRKLAND, FLEMING, GREEN, MARTIN AND ELLIS
33 N. La Salle St. RA 6-2929
(For Armour and Co. and Panda Corp.)

(For Goodyear Rubber Co.)
KIRKLAND, FLEMING, GREEN, MARTIN AND ELLIS

(For Howes Leather Co. Inc.)
~~Sonnenschein~~, Berkson, Lautmann, Levinson, and Morse
77 W. Washington St. (2) AN. 3-6400

(For U.S. Rubber Co.)
SNYDER, CHADWELL AND FAGERBURG
135 S. La Salle St.
RA. 6-2545

~~(For The Carborundum Co.)~~
~~SCHUMACHER, GILMORE, AND VAN NESS~~
~~1st Nat'l. Bank Bldg.~~
~~Chicago, Ill. CE. 6-2150~~

(For U.S. Leather Co.)
LOUIS GOLDMAN
30 N. Michigan Ave. CE. 6-7676

(For Public Shoe Service Corp.)
B OWN, FOX, AND BLUMBERG
231 S. La Salle St. RA. 6-9400

~~(For Levey Dietath Co. incorrectly designated as Phila Leather Co. Inc.~~ and ~~Schaffer & Rosenn Co.~~, Rockford Findings and Leather Co. and Springfield Leather Storeand ~~Jake H. Mitowsky Leather Co.~~)
ZIMMERMAN AND NORMAN
111 W. Monroe St. CE. 6-0802

(For Best Foods Inc.)
ARTHUR R. SEDER, JR.
11 S. La Salle St. ST. 2-5400

(For Dan Grippo dba Grippo and Co.)
HENRY J. JUNGE
111 W. Monroe St. RA. 6-0677

(315)

(P. 220 C)

50 C 844

[redacted]

(For Ohio Rubber Co.)
omit HEYER, SCHOLER, AND MAHER-EBAUGH
1 N. La Salle St. RE. 6-9760

(For James V. Lobell et al and
omit Wil. Rosha dba Cavalier Co.)
[redacted]
234 S. La Salle St. Co. 6-2768

(For Bohr-Manning Corp.).
omit [redacted]
134 W. Washington St.
CE. 6-1322

([redacted]) withdrawn
[redacted]
[redacted]

([redacted]) Withdrawn
[redacted]
[redacted]

(For Southern Leather Co.) Richenbaum, Walter and
omit [redacted] Scott Little Rock, Ark.
[redacted]
1st Natl. Bank Bldg.
Chicago, Ill.

(For Father-Panco Rubber Co. and Essex Rubber Co.)
omit LOY E. MC IHTOSH AND KENNETH B. KINK
135 S. La Salle St. CE. 6-2251

JACK KLINGER for as
9625 Emerson Avenue Signature to this petition
Miami, Florida Order of Court 11/29/53

OUT OF TOWN ATTYS.

omit (For Kaemark Mfg. Co.)
ABRAHAM KINGLOCK
160 Broadway
New York 38.

(U.S. Leather Co.)
KAYE, SCHOLER, FIERMAN AND HAYS.
149 Broadway
N.Y.

ALFRED E. SAWYER
56 Beaver St. WH 4-1036
N.Y. (4)

omit (For O'Sullivan Rubber Co. of Va.
JAMES E. INGRAM, JR.
901 Pope Ave.
Hagerstown, Maryland

For K. Kaplan & Sons Co
omit S. Richard Fine
173 W. Madison St
FR 2-7844

(314)

317 NORMAN P. SHAFFER and BRUCE R. SHAFFER, co-partners, d/b/a NORMAN P. SHAFFER & SON[1], EDWARD J. SCHMIDT, d/b/a E. J. SCHMIDT CO.; EDWARD F. HEIDENREICH & SONS, INC.; JACK BIONDI and TONY BIONDI, co-partners, d/b/a BIONDI BROS. LEATHER & FINDINGS; WILLIAM G. DEARHAMMER and C. DORLAND GLASS, co-partners, d/b/a DEARHAMMER & GLASS; EMIL JULIANO, d/b/a JULIANO LEATHER & FINDINGS; S. J. C. SUPPLY HOUSE, INC.; KINDSCHI LEATHER CO., INC.; RUTH HOLMAN, d/b/a SHEBOYGAN LEATHER COMPANY and FRANK CIRESI, and all others similarly situated, PLAINTIFFS,

vs.

UNITED STATES RUBBER CO., A Corp.; CAT'S PAW RUBBER CO., INC., THE HOLTITE MANUFACTURING CO., A Corp.; BILTRITE RUBBER CO., A Corp.; PANTHER-PANCO RUBBER CO., A Corp.; ESSEX RUBBER CO., A Corp.; GOODYEAR TIRE AND RUBBER CO., INC., and [1]O'SULLIVAN RUBBER CORP., UNITED STATES LEATHER CO., HOWES LEATHER COMPANY, INC.; ARMOUR & CO., A Corp.; and [1]COVER AND COMPANY, INC.; GRIFFIN MANUFACTURING CO., A Corp.; KNOMARK MANUFACTURING CO., A Corp.; *JAMES LOBEL AND WILLIAM HOCHA, d/b/a CAVALIER POLISH CO.; PANDA CORPORATION AND [2]BEST FOOD PRODUCTS CO., THE CARBORUNDUM CO.; BEHR-MANNING CORP.; and MINNESOTA MINING & MFG. CO.; RUBLIC SHOE SERVICE CORP.; DAN GRIPPO, d/b/a GRIPPO & CO.; JACK KLINGER, d/b/a A. LEVITON CO.; K. KAPLAN SONS & CO.; RUDOLPH E. KAPLAN, ELI KAPLAN, J. GILBERT KAPLAN, RUBEN CHUPAK, d/b/a REICK-LANGDENDORF CO.; [3]PHILADELPHIA LEATHER CO., INC.; SOUTHERN LEATHER CO., A Corp.; LANDWERLIN LEATHER CO., SCHEFFER & ROSSUM CO., A Corp.; J. H. WILENSKY LEATHER CO., ROCKFORD FINDINGS & LEATHER CO., SPRINGFIELD LEATHER STORE, ILLINOIS LEATHER COMPANY, DEFENDANTS

Amended as of order entered 6-20-50. [d]* James V. Lobell and [1]William Hoehn, d/b/a [1]Cavalier Co.

* Amended as of order entered 6-16-50.

[2] Best Foods, Inc.

[3] Levy Distributing Company (Incorrectly designated as Philadelphia Leather Co., Inc.).

* A. Leveton Company, a Delaware Corporation. Dis. 5-6-55.

* Amended by supplemental complaint filed 4-5-55.

ORDER CAUSE REASSIGNED TO JUDGE LABUY
D. C. Form No. 106 A

(P. 222)

JUDGE ~~BARNES~~ Labuy

50C 844 DOCKET ~~A-1960-A~~ CALENDAR

TITLE OF CASE	ATTORNEYS
NORMAN P. SHAFER, ET AL. Plaintiffs VS. UNITED STATES RUBBER CO., ET AL. Defendants. SEE RIDER ATTACHED *Basis of action:* ANTI-TRUST - Sherman, Clayton and Robinson-Patman Acts - Seek accounting of all discriminatory price differentials -Injunction etc., *Jury trial claimed by* A. LEVETON CO., deft., *on* 4/26/55 & Jury Demand by pltfs April 29,1955	*For Plaintiff:* and Katz HEISLER / ~~ASKOW & STEVENS~~ 7 S. Dearborn St. FR 2-4996. GEORGE N. KOTIN 77 W. Washington St. CE 6-9638 MASTER IN CHANCERY: MANUEL E. COHEN 1 N. LaSalle St.(2) Suite 2250 *For Defendant:*

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
7 [illegible]	[illegible]						
7-7-50	H.A.A. & Draw 9		7 88				
JUL 20 1950	JUNE REPORT		15 00	—			

ABSTRACT OF COSTS		RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT	

(p.223)

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
6-12-50	Filed complaint and	15 00		
6-12-50	Issued summons and (15) copies for service on: United States Rubber Co., a corp., Goodyear Tire and Rubber Co., Inc., O'Sullivan Rubber Corp; United States Leather Co; Howes Leather Co., Inc; Armour & Company; Best Foods Products Co., The Carborundum Co; Behr-Manning Corp; Minnesota Mining & Mfg. Co; Public Shoe Service Corp., Dan Grippo d/b/a Grippo & Co., J. K. Klinger, d/b/a A. Lebiton Co; K. Kaplan Sons & Co; Rudolph E. Kaplan, Eli Kaplan, J. Gilbert Kaplan, Ruben Chupak, d/b/a Reich-Langendorf Co.			
6-12-50	Issued summons and copy, for service on Rockford Finding & Leather Co., Rockford, Illinois, Western Div. Nor. Dist. of Ill.			
6-12-50	Issued summons and copy with copy of complaint for service on Springfield Leather Store, mailed to U.S. Marshal, Springfield, Illinois, for service			
	Issued summons and copy with copy of complaint for service on Knomark Mfg. Co. mailed to U. S. Marshal Brooklyn, N. Y.			
	Issued summons and copy with copy of complaint for Panda Corporation mailed to U.S. Marshal, Milwaukee, Wis.			
	Issued summons and copy with copy of complaint for service on Southern Leather Co. mailed to U. S. Marshal Memphis, Tenn.			
	Issued summons and copy with copy of complaint for service on Springfield Leather Store mailed to U. S. Marshal, Srpingfield, Ill.			
	Issued summons and copy with copy of complaint for service on Philadelphia Leather Co. Inc. mailed to U. S. Marshal, Omaha, Neb.			
	Issued summons and copy with copy of complaint for service on Griffith Mfg. Co. mailed to U. S. Marshal Omaha, Neb.			
	Issued summons and copy with copy of complaint for Cover and Company mailed to U. S. Marshal, Philadelphia Pa.			
6-19-50	Issued summons and copy with copy of complaint for service on Biltrite Rubber Co and Panther-Panco Rubber Co. mailed to U. S. Marshal, Boston Mass.			
	Issued summons and copy with copy of complaint for service on Essex Rubber Co. a corp. Mailed to U. S. Marshal, Trenton. N. J.			
	Issued summons and copy with copy of complaint for service on J. H. WILENSKI LEATHER CO., Mailed to U. S. Marshal, Atlanta, Ga.			
	Issued summons and copy with copy of complaint for service on Scheffer & Rossum Co. Mailed to U. S. Marshal Minneapolis, Minn.			
	Issued summons and copy with copy of complaint for service on Landwerlin Leather Co., Mailed to U. S. Marshal Indianapolis, Ind.			
6-20-50	Issued summons and 3 copies with copies of complaint service on Cat's Paw Rubber Co., Inc. Holtite manufacturing Co., James V. Lobell & William Hoehn doing business as CAVALIER CO. mailed to U.S.Marshal, Baltimore. Md.			

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D. C. 110A

50 C 844

(p. 224)

16—63730-1

DATE	PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
CONT'D.		PLAINTIFF	DEFENDANT	
6-16-50	Fld. Motion (2) L			
" " "	Order the Best Foods, Inc. substituted as deft. in lieu of Best Foods Products Co. and summons to issue, and summons to issue for certain defts. outside of this jurisdiction etc. - DRAFT - Barnes, J. (2)			
	Mld. Notice to attys. 6-21-50			
6-20-50	Fld. Motion. (1)			
" " "	Enter order amending complt. by substituting James V. Lobell & William Hoehn, d/b/a Cavalier Co. in lieu of deft. James Lobel & William Hoehn d/b/a Cavalier Polish Co. & Clerk directed to issue summons to substituted defts. etc. - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 6-21-50 L			
6-16-50	Ord. cs. referred to the Executive Comm. for reassignment with the suggestion that it be reassigned to Judge LaBuy who has a lower-numbered ~~related~~ cause (50 C 229)-Barnes, J.			
" " "	Ord. cs. reassigned to Judge LaBuy-DRAFT-Js. Barnes, Igoe and Campbell-(Executive Committee) (1)			
	Mld. notice to attys. 6-23-50 P			
6-21-50	Filed summons ret'd. served as to Ira J. Lechterman, President of Southern Leather Co. 1 serv. $2.00			
6-22-50	Filed summons ret'd. served as to Springfield Leather Store. 1 serv. $2.00			
6-23-50	Fld. Appearance of Minnesota Mining & Mfg. Co. and that of their attys. L			
" " "	Fld. summons ret'd. served as to Panda Corp. 1 serv. $2.12 L			
" " "	Fld. summons ret'd. served as to the Griffin Mfg. Co. 1 serv. $3.20 L			
" " "	Fld. summons ret'd. served as to Knomark Mfg. Co. 1 serv. $3.20 L			
6-26-50	Filed Appearance of Armour & Co. and their attys.			
" " "	Filed Appearance of The Goodyear Tire & Rubber Co., Inc. and their attys.			
" " "	Filed Appearance of Howes Leather Co. and their attys.			
" " "	By stip. order time of Armour & Co., Goodyear Tire and Rubber Co., Inc., and Howes Leather Co., Inc. to answer or make some motion or motions extd. to and including Sept. 10, 1950 - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 6-28-50 jb			
6-28-50	Fld. summons ret'd. served as to Scheffer & Rossum Co. 1 serv. $2.12 L			
" " "	Fld. Appearance of the United States Rubber Co. and that of their attys.			
" " "	Fld. Appearance of Public Shoe Service Corp. and that of their attys.			
6-29-50	Fld. Appearance of The Carborundum Co. and that of their attys.			
6-29-50	Fld. Appearance of The United States Leather Co. and that of their attys.			
6-28-50	Fld. Stip. (1) L			
" " "	Ord. on stip. extd. time of the United States Rubber To plead to and including Sept. 10, 1950-LaBuy, J.			
	Mld. notice to attys. 6-29-50 L			

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50 C 844 (p. 225)

16—42766-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
CONT'D.				
6-29-50	Fld. summons ret'd. served as to Landwerlin Leather Co. 1 serv. $2.00 L			
" " "	Fld. summons ret'd served as to Cover and Company, Inc. 1 serv. $2.12			
" " "	Fld. summons ret'd. served as to Cat's. Paw Rubber Co. Holtite Mfg. Co. and James V. Lobell and William Hoehn d/b/a Calavier Co. 3 serv. $6.84			
" " "	Fld. Sip. (1)			
" " "	On stip. extd. of time to answer, move or otherwise plead to Sept. 10, 1950 as to deft. Public Shoe Service Corp. - LaBuy, J.			
" " "	Fld. Stip. (1)			
" " "	On stip. extd. time of the Best Foods Inc., to answer move to dismiss or otherwise plead to ans including Sept. 10, 1950 - LaBuy, J.			
	Mld. notice to attys. 7-11-50			
6-30-50	Fld. Appearance of Scheffer & Rossum Co., Rockford Findings & Leather Co. & Springfield Leather Store and that of their attys. JUN 1950			15 00
" " "	Fld. Stip. (1)			
" " "	Ord. on stip. to extd. time for deft. Minnesota Mining & Mfg. Co. to answer etc. to and incl. Sept. 11, 1950- LaBuy, J.			
	Mld. notice to attys. 7-11-50			
7-3-50	Fld. Stip. (1)			
" " "	By stip. time of defts. The Carborundum Co. to plead or answer extd. to Sept. 10, 1950 - DRAFT - Sullivan, J. (1)			
	Mld. notice to attys. 7-11-50 L			
7-5-50	Filed summons retd. served as to Rockford Findings and Leather Co. 1 serv. $5.60 jb			
7-5-50	Order on stipulation extending time to Sept. 10, 1950 of Jack Klinger Defendant to plead - DRAFT- SULLIVAN,J. (1)			
7-5-50	Filed Stipulation of Jack Klinger (1)			
7-5-50	Filed Summons returned executed Essex Rubber Co $2.18			
7-5-50	Filed Summons returned executed Best Foods Co. $2.12			
7-5-50	Filed Appearance of Jack Klinger by I. Leonard Kovitz			
7-7-50	Filed Appearance of Landwerlen Leather Co. by Zimmerman & Norman attys			
7-7-50	Order extending time to Sept. 10, 1950 for certain Defts. to plead per stipulation - DRAFT- SULLIVAN,J. (1)			
7-7-50	Filed Appearance of Behr-Manning Corp. by Link, Hanson & Towle attys			
7-7-50	Filed Special Appearance of Panda Corporation by its attorneys Kirkland, Fleming, Green, Martin & Ellis			
7-7-50	Filed Appearance of K.Kaplan sons & Co. et al by Harry Z. & Bernard Perel attys			
7-7-50	Filed Stipulation(George N. Kotin for Panda)(1)			
7-7-50	Order extending time for taking of depositions and reservation of prior right pursuant to stipulation -DRAFT-SULLIVAN,J.			
7-7-50	On stipulation Order extending time to answer or plead to Complaint to Sept. 10, 1950 - SULLIVAN,J. (1)			
7-7-50	Filed Stipulation of Armour & Co. (1)			
7-13-50	On stipulation of Plaintiff and Defendants James V. Lobell and William Hoehn Order extending time to answer or make motion with respect to Complaint to Sept. 10, 1950 - DRAFT- SULLIVAN,J. (1) k			

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U. S. GOVERNMENT PRINTING OFFICE

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D. C. 110A

50 C 844

(p. 226)

DATE	PROCEEDINGS	CLERK'S FEES		AMOUNTS REPORTER'S EXCLUSIVE RETURNS
		PLAINTIFF	DEFENDANT	
7-13-50	Filed Stipulation (1)			
7-7-50	Filed Stipulation (K. Kaplan & Co.) (1)			
7-7-50	Order extending time to answer or otherwise plead to Sept. 10, 1950 - DRAFT- SULLIVAN,J. (1)			
7-7-50	Filed Stipulation (Catspaw Rubber Co.) (1)			
7-7-50	By stipulation time to file pleadings in conformance with Special Appearance to and including Aug. 10,. 1950 - DRAFT SULLIVAN,J. (1)			
7-10-50	Filed Desimation of local counsel for Defendant Southern Leather Co. letter form.			
7-10-50	Filed Summons Returned served as to Phil. Leather Co. $2.00			
7-10-50	Filed Proof of Service			
7-10-50	Filed Motion to quash service & dismiss as to Southern Leather Co. (5)			
7-12-50	Filed Stipulation (Knomark Mfg. Co.) (1)			
7-12-50	Filed Appearance of United States Leather Co. by Kaye, Scholer, Fierman & Hayes			
7-12-50	Filed Notice of Motion (1)			
7-12-50	Leave to file appearance of non-resident counsel and extending time to plead to Sept. 10, 1950 per stip-DRAFT-SULLIVAN,J. (2)			
7-12-50	Filed Notice			
7-12-50	Filed Stipulation			
7-12-50	By stipulation Order extending time to plead, answer or move in respect to complaint of amendment thereof to Sept. 10, 1950 -DRAFT- SULLIVAN, J. (1)			
7-13-50	Filed Appearance of James V. Lobell & William Hoehn as Cavalier Co. by Burt A. Crowe, Atty			
7-13-50	Filed Stipulation (1)			
7-13-50	Leave to take deposition without formal notice at time agreed upon by attorney - DRAFT- SULLIVAN,J. (1)			
7-14-50	Filed Appearance of Minnesota Mining & Mfg. Co. by Robert C. Keck atty.			
7-14-50	Filed Summons returned served (15 Services $36.00 K Mailed notice to attorneys 7-18-50 k			
7-17-50	Fld. Summons returned served as to Panther Panco Rubber Co, and the Piltrite Rubber Co., by serving Richard Marcus, Asst. Secy. of the Panther Panco Rubber Co. $4.60 r			
" " "	Filed Appearance of Pather-Panco Rubber Co., and Essex Rubber Co., defts., & Loy N.McIntosh & Kenneth B. Kirk, and Alfred E. Sawyer, as attorneys.			
" " "	Filed Notice and Motion. (2)(12)			
" " "	Motion for the issuance of a preliminary injunction against Goodyear Tire & Rubber Co., one of the defts. & for other relief is referred specially to Master Manuel E. Cowen, for hearing and report - Campbell,J.			
	Mailed notice to attorneys, 7-26-50. r			
	Mailed certified copy of order of reference to Master Manuel E. Cowen, 7-26-50. r			
7-18-50	Filed Summons returned served on J.E.Wilenski Leather Co. Marshal's Fee $2.12.r			
7-12-50	Filed appearance of James E. Ingram, Jr., as Attorney for O'Sullivan Rubber Corporation of Virginia. (1)			
7-21-50	Filed Stipulation. (1)			
" " "	Enter Ord. by stip., tm. to ans. or othewise plead extd to Sept. 10, 1950-DRAFT-Campbell,J. (1)			

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50 C 844 (P 227)

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
	Mailed notice to attys., 7-26-50. r			
7-25-50	Filed Stipulation (1)			
7-25-50	Filed Affidavit of Jake H. Wilensky (3)			
7-25-50	Filed Affidavit of J. V. Rogers (3)			
7-25-50	Filed Affidavit of A. C. Thomas (1)			
7-25-50	Filed Appearance & Proof of service (1)			
7-25-50	Filed Motion to dismiss etc. (2)			
7-25-50	By stipulation order for filing Wilensky Leather Company's motion to dismiss and quash summons, extending time for filing briefs subject to agreement of counsel and extending time for filing all other motions extended 10 days after disposition of Motion to dismiss -DRAFT-CAMPBELL,J.			
7-25-50	Order extending time for defendant to answer until Sept. 10, 1950 - DRAFT- CAMPBELL,J. (1)			
	Mailed notice to attorneys 7-27-50 K.			
7-27-50	Filed Appearance of Deft. Levey Distributing Co., (Incorrectly designated as Philadelphia Leather Co.,Inc.) (1)			
" " "	Filed Motion to Dismiss & Quash Summons as to Deft.Levey Distributing Co.. (2)			
" " "	Enter Agreed Order for Levey Distributing Co. to file motion to dismiss, affidavits to be filed in 20 ds, brfs. to be filed as further agreed between counsel, all other motions to be filed 10 days after disposition of motion to dismiss-DRAFT-Barnes,J. (2)			
	Mailed notice to attys., 7-28-50. r			
7-31-50	Filed Stipulation. (1)			
" "	On stip., Ord. tm. for deft. Panda Corp. to plead to complt. extd. to Sept. 10, 1950-DRAFT-Barnes,J.			
	Mailed notice to attys., 8-1-50. r			
8-18-50	Fld. Affidavits of Morris Levey, Herman A. Nelson and Harry Freshman, in support of Motion to dismiss and quash service of summons. (7) L			
8-18-50	Fld. Transcript of Proceedings had before Hon. William J. Campbell, on July 17, 1950. (6) L			
8-[illegible]-50	Filed Stipulation (1)			
8-[illegible]-50	Defts time to file motion to quash and dismiss is extd to Sept 10, 1950 Draft- Igoe, J			
	Mld notice to attys 9-7-50 d			
9-[illegible]-50	Fld. Stip. (1)			
" "	Defts. tm. to ans. or otherwise plead is extd. to Sept. 29, 1950-DRAFT-Igoe,J. (1)			
	Mailed notice to attys., 9-11-50. r			
9-8-50	Fld. Notc. & Mo. of James V.Lohell & William Hoehn,d/b/a Cavalier Co., to Quash Service of Summons & Dismiss.(3)			
" "	Filed Notice and 3 Joint & Several Mos. to Dismiss,etc.(3)(3)(3)(5)			
" "	Filed Mo. to Dismiss as to Deft. Panda Corp. (2)			
" "	Filed Mo. to Dismiss & Quash Service as to Scheffer &Rossum Co.(2)			
" "	Filed Mo. to Dismiss & Quash Service of Summons as to Sandwerlen Leather Co. (3)			
	Ent. Ord. in re filing of brfs. & affdvts. herein-DRAFT-Igoe,J. (2)			
	Mailed notice to attorneys, 9-11-50. r			

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D. C. 110A 50 C 344 (p 228)

16—43780-1

DATE	PROCEEDINGS	CLERK'S FEES: PLAINTIFF.	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
(Contd.)				
9-8-50	Entered Order by agmt. lv. Panda Corp. fl. mo. instr; affdvt. in suppo. Sept. 14, 1950; brf. in suppo. Sept. 25, 1950; reply brf. Oct. 5, 1950, with reservation for further mos—DRAFT_Igoe,J. (1)			
" " "	Defts. given lv. tofl. mos. to dismiss instr. & are given 10 ds. to fl. supporting affdvts.—DRAFT—Igoe,J. (2) Mld. notc. to attys., 9-11-50. r			
9-8-50	Fld. Brief in Support of Motion to Quash Service of Summons and Dismiss the Action. (4) L			
9-12-50	Fld. Stip. (1)			
" " "	Ent. Ord. on stip. to extend tm. for deft. O'Sullivan Rubber Corp. to fl. mos, or plead to Nov. 15, 1950 —LaBuy,J. Mld. notc. to attys., 9-13-50. r			
9-14-50	Fld. Notice and Affidavit of Aug. C. Orthmann. (1)(2)			
" " "	Fld. Affidavit of Emil F. Cottor and J. B. Thompson, in support of motion to dismiss and quash service of summons. (3)			
" " "	Fld Affidavits of F. D. Landwerlen and Guinevere Burch, in support of motion to dismiss and quash service of summons and proof of service. (4)(1) L			
9-18-50	Fld. Prf. of Serv. of Reply Brf. of Plfs. r			
9-22-50	Filed Reply br. of defts. James V. Lobell and William Koehn d/b/a Cavalier Co. (3)			
" " "	Enter Stipulated order amending Southern Leather Co., Inc. Motion to dismiss and quash service and brief in support and granting 10 days after disposition thereof for filing subsequent motions—DRAFT—LaBuy, J. (2) Mld. notice to attys. 9-25-50 P			
9-25-50	Fld. Motion. (1)			
" " "	By agreement order name of deft. O' Sullivan Rubber Corp. stricken from pendg. joint and several motions, etc., - DRAFT - LaBuy, J. (1)			
	Mld. notice to attys. 9-26-50			
" " "	Fld Brief of Deft. Panda Corp., to dismiss this action or in lieu thereof, to quash the service of summons on the ground of improper venue - (10)			
9-29-50	Filed Stip. (1)			
" " "	By stip. time for deft. Cover & Co. to answer or otherwise move with respect to complt. extd. to Oct. 30, 1950—LaBuy, J. Mld. notice to attys. 10-2-50 P			
10-5-50	By agreement time of pltfs. to fl. brief in ans. to brief of deft. Panda Corp. extd. to Oct. 16, 1950—DRAFT—LaBuy, J. (1) Mld. notice to attys. 10-6-50. P			
10-13-50	Filed Stipulation. (1)			
" " "	Ord. by stip. compl. fld. against the deft. Cover & Co. dism. with prej...DRAFT—LaBuy,J. (1) Mld. notc. to attys., 10-17-50. r			
10-16-50	Filed Reply Brief of Plffs. Oppos. Mo. Deft. Panda Corp. to Dismiss, etc. , & Affdvt. (11) r			
10-20-50	Ord. by agrmt. time of deft. Panda Corp. to file reply brief and affs. extd. to Nov. 14, 1950 - DRAFT - (1) Mld. notice to attys. 10-23-50 L			

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50 C 844

(p. 229)

16-44756-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
~~10-23-50~~	~~On mo deft. Ord. hrg. on deft's mo to transfer cause cont. to Nov. 6, 1950 - Barnes, J.~~ Error (see 50 C 995) ~~Mld. notc. to attys., 10-24-50.~~			
11-3-50	Fld. Affdvts. of H.L.Cords, J. Braude & A.C.Orthmann and Receipt. (1)			
" 6 " "	Fld. Reply Brf. of Deft. Panda Corp. to Dism.Action on Ground of Improper Venue. (8)r			
11-27-50	Filed Appearance of Best Foods, Inc.			
11-28-50	Filed Stip. (1)			
" " "	On stip. time of deft. O'Sullivan Rubber Corp. to move or plead extd. to Jan. 15, 1951-LaBuy, J.			
	Mld. notice to attys. 12-4-50. P			
1-11-51	By stip, O'Sullivan Rubber Corp. is dismissed as a deft. in this cause-DRAFT-LaBuy, J. (1)			
	Mld. notice to attys. 1-12-51. P			
1-11-51	Filed Stip. (1)			
4-23-51	Filed Appearance of Dan Grippo, etc. and Attys. P			
5-16-51	Filed Motion to dismiss by pltf. Edward F. Heidenreich & Sons, Inc. (2)			
" " "	Filed Motion to dismiss by Pltf. Edward J. Schmidt Co. (2)			
" " "	Filed Motion to dismiss by Pltf. Juliano Leather & Findings. (2)			
6-18-51	Filed Memorandum of the Court (See filed 50 C 229) (18)P			
6-26-51	Filed Notice. (4)			
" "	Motion to enter orders in conformance with Court's Memorandum Opinion of June 18, 1951 taken under advisement and disposition cont'd. to June 28, 1951-LaBuy, J.			
" " "	Enter order quashing service of summons against defts. Lobell and Hoehn, etc. and dismissing said defts. as parties-DRAFT-LaBuy, J. (1)			
6-26-51	Enter order quashing service of summons against defts. Southern Leather Co. and 4 others and dismissing said defts. as parties with costs against pltfs-DRAFT-LaBuy, J. (2)			
	Mld. notice to attys. 7-5-51. P			
6-28-51	Motion of Panda Corp. to quash service disallowed and ruling reserved, etc. Motion of defts. Lobell and Hoehn, etc. to quash service allowed. Motion of defts. Southern Leather Co., et al to quash summons allowed. Motion of defts. to require pltfs. to fl. amended complt. overld. Motions to dismiss class action and to strike etc. allowed with leave to pltfs. to add addl. parties by name. Motions to drop certain pltfs. and defts. as misjoined parties sustd. etc. Appearance of Heisler and Askow and Stevens withdrawn as counsel for pltfs. and leave to substitute Heisler and Katz as attys. for pltfs-DRAFT-LaBuy, J. (4)			
	Mld. notice to attys. 7-5-51. P			
7-27-51	Filed Stip. (1)			
" " "	On stip. pltfs. time to file an amended complt. is extd. to Sept. 15, 1951 and defts. time to answer or otherwise plead thereto is extd. to Oct. 15, 1951-Inoe, J.			
	Mld. notice to attys. 8-2-51. P			
8-24-51	~~Filed Motion for Order quashing Interrogatories (4 and Interrogatories attached)~~ error see 50 C 229 K			
8-29-51	Filed Interrogatories (2) K.			

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50 C 844

(P. 230)

10—43788-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
9-7-51	Filed Stip. (2)			
" " "	By stip. time for serving objections to interrogatories served on certain defts. by the pltfs. extd. to Sept. 28, 1951, and time for answering said interrogatories extd. to Oct. 3, 1951-DR/FT-Campbell, J. (2)			
	Mld. notice to attys. 9-10-51.	P		
9-14-51	Filed Amended Complaint (37 pages & Exhibits)	K		
9-24-51	Filed Proof of service (3)			
9-24-51	Filed Affidavit of service (1)	K		
10-1-51	Order by agreement extending time for defendants to ans or make some motion or motions with respect to the amended complaint to and including November 10, 1951- LA BUY,J.			
	Mailed notice to attys 10-3-51	P		
10-2-51	Filed Answers of the Carborundum Co. to Interrogatories (3)			
10-2-51	Filed Answers of Minnesota Mining & Mfg. Co. to Interrogatories 1 to 4 inclusive (3)	K.		
10-15-51	Filed Answer of Knemark Mfg. Co. (5)			
10-29-51	Filed Appearance of Harry Becker atty for E. J. Schmidt & Co.	K.		
10-29-51	Filed Notice. (2)			
" " "	Filed Stipulation of Discontinuance. (2)			
" " "	Order to dismiss U. S. Leather Co. as per stip-DRAFT-LaBuy, J. (1)			
	Mld. notice to attys. 10-30-51.	P		
10-29-51	Filed Notice of Motion. (2)			
" " "	Leave to Atty. Francis Heisler, et al to answer motion to dismiss action as to Edward J. Schmidt doing business as E. J. Schmidt & Co., within 15 days and hrg. cont'd. to Nov. 19, 1951-LaBuy, J.			
	Mld. notice to attys. 10-30-51.	P		
11-9-51	Filed Notice (3)			
11-9-51	Filed Motion to strike the Amended Complaint (3)			
11-9-51	Leave to Defendants Bilrite Rubber Co. et al to file mo to strike amended Complaint instanter and filing of briefs by the parties with respect thereto deferred until further order of Court etc -DRAFT- LA BUY,J. (1)			
11-9-51	Filed Notice (3)			
11-9-51	Order under Rule 41 (a) (1) F. R. C. P. dismissing action as to defendant Minnesota Mining & Mfging Co. with prejudice - LA BUY,J.			
11-9-51	Filed Stipulation (1)			
11-9-51	Order to have motion of Panda Corporation to dismiss etc stand as motion to dismiss to amended Complaint etc as per stipulation - DRAFT- LA BUY,J. (1)			
	Mailed notice to attys 11-14-51	K.		
11-13-51	Filed Counter-Affidavit of Plaintiffs (1)			
11-13-51	Filed Suggestions in support of Plaintiffs' Counter-Affid.			
11-14-51	Filed Reply to suggestions etc (3) (4)	K.		
11-19-51	Order hearing on motion of Plaintiff Edw. J. Schmidt to dismiss as to him and answer continued to Nov. 26, 1951 on the Court's own motion - LA BUY,J.			
	Mailed notice to attys 11-20-51	K.		

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50 C 844 (P 239)

16- 42786-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
11-26-51	On Motion of Edward J. Schmidt, it is ordered that this cause be dismissed as to him; the Court reserving to the trial or other disposition of this cause, the matter of its jurisdiction to hear the petition of attorneys for plaintiffs for fees as to Edward J. Schmidt. It is further ordered that the request for attys fees contained in the suggestions filed by attys for plaintiff stand as a petition for attorneys fees- LA BUY,J. Mailed notice to attys 12-3-51			K
11-30-51	Filed Counter motion of the pltfs. in opposition to the defts. motion to strike amended complt. and Brief of pltfs. in opposition to the defts. memorandum in support of their motion to strike amended complt. (See File 50 C 229)		(9)P	
12-5-51	Filed Answers of the Behr- Manning Corp. to Interrogatories 1 to 4 inc.		(3)	K.
1-7-53	Filed Second Amended Complaint		(16)	d
1-7-53	Filed Proof Of Service			
1-19-53	Filed Notice and Proof of Service		(2)	
"	File Motion for leave to file Second Amended Complaint Nunc Pro Tunc and Lv. to Substitute certain pages; and three pages attached thereto		(2)	
"	Filed Notice		(2)	
"	Filed Motion to dismiss Rockford Findings & Leather Co. & Springfield Leather Store as defts.		(1)	
"	Filed Notice and Motion to Dismiss second amended complaint as to Best Foods Co.; and Affidavit		(2)	H
"	Motion to dismiss Rockford Findings & Leather Co. and Springfield Leather Store as defts. continued to 1-23-53 before Judge LaBuy. - Barnes, J. Mailed notice to attys 1-21-53			H
1-19-53	Motion of deft. The Best Foods, Inc. to dismiss second amended complaint as to this deft. contd to 1-23-53 before Judge LaBuy. - Barnes, J. Mailed notice to attys 1-22-53			H
1-19-53	Enter order leave pltf; to file second amended complaint Nunc Pro Tunc as of 1-7-53 and to substitute certain pages in pltf's second amended complaint. Leave to all defts to answer or plead within 30 days. - Perry, J. Mailed notice to attys 1-21-53			H
1-20-53	Filed Proof of Service		(1)	H
1-23-53	Arguments heard on motions of defts The Best Foods, Inc. and Rockford Findings and Leather Co. and Springfield Leather Store to dismiss and said motions are overruled. LaBuy, J. Mailed notice to attys 1-26-53			H
2-17-53	Filed Notice		(3)	
2-17-53	Filed Motion Of All Defendants To Strike Certain Portions Of The Second Amended Complaint		(3)	
2-17-53	Filed Notice		(1)	
2-17-53	Filed Motion Of Ponds Corporation & Corporation		(1)	
2-17-53	Order motion to dismiss or to quash service of summons made to amended complaint taken as motion to dismiss Second Amended complaint etc Draft-LaBuy, J Mld ntc to attys 2-18-53			d

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50 C 844

16—42756-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
2-17-53	Enter order motion of all defts to strike certain portions of second amended complaint denied in part and allowed in part. Time of defts to answer complaint as amended extended to 4-1-53. DRAFT - LaBuy, J.			
	Mailed notice to attys 2-20-53 H			
2-20-53	Filed Notice, Motion and Stipulation. (4)			
" " "	Enter order to dismiss deft. The Best Foods, Inc. pursuant to stipulation-DRAFT-LaBuy, J. (1)			
	Mld. notice to attys. 2-24-53. F			
3-16-53	Filed Stipulation (1)			
"	Enter order to extend time to file answer of U.S.Rubber Co. to Second Amended Complaint to 4-20-53 as per stip.-LaBuy,J.			
	Mailed notice to attys 3-17-53 H			
3-26-53	Filed Stipulation (1)			
" " "	By stipulation order extdg time to answer to April 24, 1953 LaBuy, J			
	Mld ntc to attys 3-30-53 d			
3-30-53	Filed Notice (3)			
"	Filed Separate Ans. of American Biltrite Rubber Co. to pltffs' Second Amended Complaint (13)			
"	Filed Separate Ans. of Essex Rubber Co. to pltffs' 2nd amended complaint (12) tb			
3-31-53	Filed Notice (3)			
"	Filed Answer of deft. Panda Corp. to 2nd Amended Complt (9)			
"	Filed Answer of deft. Armour and Co. to 2nd " " (9)			
"	Filed Answer of deft. Dan Grippo to 2nd Amended Complt (4)			
"	Filed Answer of " Knomark Mfg. Co. " " " (6)			
"	Filed Answer of " Behr-Manning Corp. " " " (3) tb			
4-1-53	Filed Notice (1)			
"	Filed Answer of deft. The Goodyear Tire & Rubber Co. Inc. to 2nd Amended Complt (13)			
"	Filed Answer of Public Shoe Service Corp. to 2nd Amended Complt (7)			
"	Filed Answer of deft. Jack Klinger d/b/a/A.Leveton Co. to 2nd Amended Complt & Notice (6) (2)			
"	Filed Notice (2)			
"	Filed Answer of deft. The Carborundum Co. to 2nd Amended Complt (3)			
"	Filed Answer of deft. Reick-Langendorf Co. to 2nd Amended Complt & Affidavit of Mailing (6) (2)			
"	Filed Answer Of deft. Griffin Mfg. Co to 2nd Amended Complt (10)			
"	Filed Answer of deft. Howes LeatherCo. Inc to 2nd Amended Complt (2)			
"	Filed Answer of K. Kaplan Sons & Co. to 2nd Amended Complt (6)			
"	Filed Notice & Proof Of Service (3)			
"	Filed Separate Answer Of Cat's Paw Rubber Co. Inc. to 2nd Amended Complt (9)			
"	Filed Separate Answer Of The Holtite Mfg. Co. to 2nd Amended Complt (9) d			
4-13-53	Filed Amended Answer of Behr-Manning Corp. to the second amended complaint. (4) tb			
4-17-53	Filed Notice (3)			
" " "	Filed Answer of U.S. Rubber Co. to pltffs' second amended Complt. (18)			

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16-42750-1

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
4-21-53	Filed Notice and Proof Of Service and Amended Answer of Deft. Knomark Manufacturing Co., to Plaintiffs' Second Amended Complaint (2) (3) d			
4-24-53	Filed Answer of Rockford Findings & Leather Co. and Springfield Leather Store to Second Amended complt. (8) tb			
4-30-53	Filed Notice And Proof Of Service (2) d			
MAY 22 1953	Cause Reassigned to Calandar of Judge KNOCH			
11-3-53	Filed Notice (2)d			
11-3-53	On motion of I. Leonard Kovitz order leave to withdraw his appearance as atty for deft Jack Klinger, d/b/a/ Leveton & Co Draft - Knoch, J Mld ntcs 11-4-53 d			
11-3-53	Order cause referred to Executive Committee for reassignment with suggestion that it be reassigned to Judge La Buy who has a lower numbered related case Now on his calender (50 C 229)-Knoch, J. Mld. notices 11-10-53.			
11-3-53	Order cause reassigned to Judge La Buy-DRAFT-Ex. Com. Mld. notices 11-10-53. P			
11-27-53	Filed Notice (2)			
" " "	Enter. ord. mo. of deft. Jack Klinger to file pro se appearance. DRAFT. Perry-J (1) Mld notices 11-30-53 tb			
12-21-53	Filed Stipulation To Dismiss (1)			
" " "	Order to dismiss on stipulation as to deft U.S.Rubber Co. with prejudice and no costs Draft-LaBuy, J Mld ntcs 12-22-53 d			
1-12-54	On motion of pltf. cause placed on passed cs. cal-LaBuy, J. Mld. notices 1-13-54. P			
2-3-54	Filed Notice (2)			
" " "	Enter order allowing substitution of atty for defts Rudolph E. Kaplan et al inceach case - LaBuy, J (see file 50 C 229)			
2-3-54	Filed Substitution Of Attys (1) Mld ntcs 2-4-54 d			
5-20-54	Filed Notice of Motion To Dismiss & Proof Of Service (2)			
5-20-54	Filed Motion To Dismiss The Defts Biltrite Rubber Co., Essex Rubber Co.,Panther-Panco Rubber Co.,Knomark Mfg.Co. and O'Connor & Goldberg (1)			
5-20-54	Filed (3) Stipulations To Dismiss (1) (1) (1)			
5-20-54	Pursuant to stipulations cause dismissed with prejudice and without costs as to defts Essex Rubber Co et al 3 Drafts - LaBuy, J Mld ntcs 5-21-54. d			
6-15-54	Cause placed on trial list - LaBuy, J Mld ntcs 6-15-54 d			
-17-54	Filed Notice and Proof of Service (2)			
-17-54	Filed Motion to dismiss (1)			
-17-54	Filed Stip. to dismiss (1)			
-17-54	Order to dismiss defts. Cat's Paw Rubber Co., Inc. and			

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DATE	FILINGS—PROCEEDINGS
9-17-54	The Holtite Manufacturing Co., as per stip- DRAFT-LaBuy, J. (1) Mld. notices 9-20-54. P
10-15-54	Filed Notice of taking depositions (4) P
11-12-54	Filed Interrogatories propounded by pltfs. to defts. under Rule 33 (7)
11-1 -54	Filed Notice and Proofs of Service (2) P
11-24-54	Filed Notice (1)
"	Enter order extend time for Howes Leather Co. Inc. to answer pltfs' written interrogatories to Dec. 31, 1954 - LaBuy, J.
	Mld ntcs 11-26-54 H
11-29-54	Filed Notice (1)
"	Enter order extd time to answer pltfs' interrogs to Dec. 31, 1954 for Armour & Co. and Goodyear Tire & Rubber Co. - LaBuy, J.
	Mld ntcs 11-30-54
11-29-54	Filed Stipulation (1)
"	Enter order extd time to file answers to interrogs of pltf to Dec. 27, 1954 for certain defts, as per stip - LaBuy, J.
	Mld ntcs 11-30-54
11-29-54	Filed Stipulation (1)
"	Enter order by stip extd time for deft Griffin Mfg. Co. to answer pltfs' interrogs until Dec. 15, 1954 - LaBuy, J.
	Mld ntcs 11-30-54. H
12-8-54	Filed Notice of taking of Depositions (3)
12-8-54	Filed Interrogatories propounded by pltfs. to deft. Public Shoe Service Corp. (1)
12-8-54	Filed Notice re: Interrogatories to deft. Public Shoe Service (1) P
12-8-54	Filed Notice and Proof of Service (3)
12-8-54	Filed Interrogatories propounded by the deft. Armour & Co. to pltfs. (9)P
12-15-54	Filed Answer of deft Griffin Mfg.Co., Inc. to plaintiffs' interrogs (8)
12-15-54	Filed stipulation (1) tb
12-21-54	Filed Notice and proof of service (1)
"	Filed Motion (2)
"	Order pltfs motion to appoint Master to preside at the further taking of the deposition of Ben Weinstein entered and contd before Judge LaBuy - Barnes, J.
	Mld ntcs 12-23-54
12-21-54	Filed Two Stipulations (1)(1)
"	Filed Aff. of Service (1)
"	Enter order on stip of the parties, interrogs propounded to pltfs by deft Armour and Co. and dated Dec.8,1954 are modified in certain respects and pltfs' time to answer interrogs extd to Jan. 13, 1955 - Barnes, J.
	Mld ntcs 12-23-54 H
12-29-54	Filed Notice (1)
12-29-54	Enter order time of defts. Armour and Company and the Good Year Tire and Rubber Co. to answer pltf's: interrogatories extended to Jan. 21, 1954- Campbell, J.
	Mld. notices 12-30-54. P
12-30-54	Filed Answer Of Deft Dan Grippo And Company To Pltffs Interrogs (2) d
12-31-54	Filed Answers Of Howes Leather Co. Inc. To The Interrogs. which were propounded to it under Rule 33 (6) d
1-3-55	Filed Answer of Deft. K.Kaplan Sons & Co. to pltffs' Interrogs 11/12/54 (64) d

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DATE	FILINGS—PROCEEDINGS		
1-3-55	Filed Answer of Reick, Langendorf & Co to Pltffs' Interrogs. of Nov 12,1954	(8)	
1-3-55	Fld Motion To Compel Answer To Questions Propounded Upon Oral Examination	(7)	
1-3-55	Filed Notice of Filing & Proof Of Service (to compel answer to questions)	(2)	
1-3-55	Mo. of pltff to compel answer to question for oral examination contd to Jan 12,1955 before Judge LaBuy - Campbell, J Mld ntcs 1-4-55		
1-3-55	Ordered time of deft. Public S oe Service Corp. to answer interrogs. filed 12/8/54 extd to Jan 13,1955 - Campbell, J Mld ntcs 1-4-55		
1-10-55	Filed Notice and proof of service	(1)	
"	Filed Interrogatories by pltf to deft Dan Grippo	(2)	H
1-11-55	Filed Notice of Filing of Interrogs. to deft. Dan Grippo and Proof of Service	(1)	
1-11-55	Filed Stipulation	(1)	
1-11-55	By stipulation pltfs. time to answer defts. Public Interrogatories extd. to and including Jan. 27, 1955-LaBuy, J. Mld. notices 1-11-55.		P
1-12-55	On motion of deft. Public S oe Service Corp. time to answer interrogatories filed Dec. 8, 1954 extd. to Feb. 2, 1955-LaBuy, J. Mld. notices 1-13-55.		P
1-12-55	Arguments hrd. on pltfs. motion to compel answers on oral examination and Ben Weinstein, President of deft. Public S oe Service Corp. directed to answer questions-DRAFT-LaBuy, J. Mld. notices 1-13-55.	(1)	P
1-13-55	Filed supplemental answer of deft Dan Grippo & Co. to pltf's interrogs	(2)	H
1-21-55	Filed Notice	(1)	
"	Filed Answer of Armour & Co. to pltfs' interrogs	(60)	
"	Filed Notice, re answer of Goodyear Tire & Rubber Co. to interrogs	(1)	H
1-25-55	Filed Notice	(2)	
"	Filed Motion	(1)	
"	Filed Stipulation	(1)	
"	Order Behr-Manning Corp. to be dismissed as a deft, per stip, with prejudice and without costs - DRAFT - LaBuy, J. Mld ntcs 1-26-55		
1-25-55	Filed Stipulation	(1)	
"	Order by stip leave to pltfs to and including Feb.10,1955 to file answer to Armour interrogatories - LaBuy, J. Mld ntcs 1-25-55		H
1-21-55	Filed answer of the Goodyear Tire & Rubber Co., Inc. etc.	(10)	t
2-7-55	Filed Stipulation	(1)	
2-7-55	By stip time of Ben Weinstein to answer interrogs extd to Feb 17,1955 LaBuy, J		d
2-10-55	Filed Answers of Wm. G. Dearhammer and C. Dorland Glass, co-partners d/b/a Dearhammer and Glass to interrogs. propounded by deft. Armour & Co.	(6) & Appendix	
2-10-55	Filed Answers of Frank Ciresi to Interrogs. by deft. Armour & Co.	(4) and Appendix	
2-10-55	Filed Answers of Jack Biondi and Tony Biondi, co-partners d/b/a Biondi Bros. Leather and Findings to Interrogs. propounded by deft. Armour & Co.	(4) and Appendix	
2-10-55	Filed Answers of Norman P. Shaffer and Bruce R. Shaffer, co-partners d/b/a Norman P. Shaffer & Son to Interrogs. propounded by deft. Armour & Co.	(4) & Appendix	
2-10-55	Filed Notice of Flg & proof of service	(1)	

(See next page)

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DATE	FILINGS—PROCEEDINGS
2-10-55	Filed Notice (2)
2-10-55	Filed Motion (1)
2-10-55	Filed stipulation (1)
2-10-55	Filed Answers of S.J.C.Supply House, Inc. to interrogs propounded by deft Armour & Co. & exhibits (5)
2-10-55	On stip. cause dis. with prej & without costs as to deft The Carborundum Co. DRAFT LaBuy (1)
2-11-55	Filed stip. (1)
2-11-55	Extd time to & including Feb. 28 in which plaintiffs Kindschi Leather Co & Sherboygan Leather Co. may file answer to interrogatories of Armour & Co. LaBuy-J. Mld ntcs 2-15-55 tb
2- 23-55	Filed Notice and Proof of Service (2)
2-23-55	Filed Motion to reset cause for trial (1)
2-23-55	Filed Notice and Motion for Declaratory Judgment of dismissal by Dan Grippo, sued herein as doing business as Grippo & Co. (4)
2-23-55	Motion for judgment dismissing Dan Grippo sued herein as Grippo and Co. taken under advisement. Lv. to file supporting brief in 10 days and all subsequent to be filed under Rule 7-LaBuy, J. Mld. notices 2-23-55. P
2-24-55	Enter order of reference to Master Manuel E. Coven-DRAFT-LaBuy, J. (2) Mld. notices 2-25-55. P
2-24-55	Mld. C. C. of order to Master Coven tb
3-1-55	Filed Request for Admission of Facts (2)
"	Enter order of dismissal of one pltf, Kindschi Leather Co. Inc. for failure to answer interrogs; extension of time for pltf Sheboygan Leather Co. to answer interrogs to March 21, 1955, both by agreement of counsel - DRAFT - LaBuy, J. Mld ntcs 3-3-55 H
3-4-55	Filed Brief In Behalf Of Dan Grippo sued herein as Grippo And Company in support of motion to dismiss (4)
3-4-55	Filed Notice (1)
3-4-55	Leave to file instanter amendment to answer of Howes Leather Company Inc. to Second Amended Complaint so as to set forth information discovered pursuant to court's order of Dec 10,1954 -LaBuy, J Mld ntcs 3-8-55
3-4-55	Filed Amendment To Answer Of Howes Leather Company Inc .and Exhibits (1) d
3-10-55	Filed Response to Request for Admission of Facts propounded to William C. Dearhammer and C. Dorland Glass, etc. by deft. Howes Leather Co. (6)
3-10-55	Filed Notice of Filing and Proof of Service (1) P
3-14-55	Filed Notice and Proof of Service (2)
3-14-55	Filed Plaintiffs brief in opposition to brief of deft. Dan Grippo, d/b/a Grippo and Co. in support of its motion to dismiss (2)
3-14-55	Filed Notice of Filing and Proof of Service (2)
3-14-55	Filed Motion and Supplemental Complaint (3)
3-14-55	Leave to file supplemental complaint under Rule 15 (d) and the deft. answer the same-DRAFT -LaBuy, J. (1) Mld. notices 3-16-55. P
3-14-55	Filed Notice of Taking depositions and proof of service (3) P

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DATE	FILINGS—PROCEEDINGS
3-15-55	Enter order giving leave to pltfs. to file supplemental complt. and leave to defts. to answer same in 10 days, etc.-DRAFT-LaBuy, J. (1) Mld. notices 3-17-55. P
3-15-55	Filed Answer of Dan Grippo, d/b/a Grippo & Co. to interrogatories propounded on Jan. 7, 1955. (2) P
3-16-55	Filed Interrogatories propounded to the pltfs. by Howes Leather Co., Inc. (6) P
3-18-55	Filed Notice and proof of service re depositions (3) H
3-21-55	Filed Notice and Proof Of Service Of Sheboygan LeatherCo.Answers and Norman P.Shaffer & Son, Further Answers (1)
3-21-55	Filed Answers Of Ruth Holman d/b/a/Sheb ygan Leather Co. To Interrogatories Propounded By Deft Armour & Company
3-21-55	Filed Further Answers of Norman P.Shaffer and Bruce R.Shaffer,Co-Partners d/b/a Norman P.Shaffer & Son To Interrogatories Propounded By Deft Armour & Co. d
3-21-55	Filed Notice (2)
3-21-55	Filed Stipulation (1)
3-21-55	By stip. the cause as to deft Public Shoe Service Corporation is dismissed with prejudice but without costs Draft -Campbell, J Mld ntcs 3-24-55 d
3-22-55	Filed Subpoena Duces Tecum retd served on M.A.Landberg witness fee of $4.14 pd
3-22-55	Filed Notice and Proof Of Service (2)
3-22-55	Filed Plaintiffs' Objections To Interrogatories Propounded To Them By Deft Howes Leather Co. Inc. (1)
3-22-55	Ordered that pltfs file brief in support of objections to interrogs.propounded by deft Howes Leather Co in 5 days with Judge LaBuy. Answering brief 5 days thereafter. Reply brief 3 days thereafter. Lv to deft Howes Leather to file answer to said objections instanter. Ruling on said objections and the answer thereto set for April 6,1955 before Judge LaBuy - Campbell, J Mld ntcs 3-22-55
3-22-55	Filed Answer Of Howes Leather Company Inc.To Plaintiffs' Objections To Interrogatories (3)
3-23-55	Filed Notice and proof of service H
"	Filed subpoena duces tecum, retd served
3-24-55	Filed Notice (2)
"	Filed Motion (3)
"	Ordered that briefs on deft's motion under Rule 45 (6) and 30 (6) to quash subpoena duces tecum and for protective order limiting scope of examination of Henry Niblack be filed with Judge LaBuy. Defts' supporting brief to be filed in 5 days, Opposing brief 5 days thereafter, reply brief 5 days thereafter - Campbell, J. Mld ntcs 3-24-55 H
3-25-55	Filed Second Interrogatory Propounded by deft. Armour & Co. to pltfs. (2)
3-25-55	Filed Notice and Proof of Service (2) P
3-29-55	Filed (2) Notices & Proof of Service (2)
3-29-55	Filed Motion for leave to Amend Supplemental Complaint filed herein (1)
3-29-55	Motion for leave to file amendment to supplemnatl complaint contd to April 5,1955 before Judge LaBuy -Campbell, J Mld ntcs 3-31-55 d

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DATE	FILINGS—PROCEEDINGS
3-9-	Motion of pltff for lv to file amendment to the answer of Frank Circes to interrogs. contd to April 5,1955 before Judge LaBuy - Campbell, J Mld ntcs 3-31-55 d
3-31-55	Filed Brief in opposition to pltffs' objections to interrogatories served by Howes Leather Co.,Inc.,a deft (8) d
3-29-55	Filed Pltfs. memo in support of pltfs. objections to interrogatories propounded by deft. Howes Leather Co.. Inc. P
3-30-55	Filed Notice and proof of service Filed pltff's objections to interrogatories propounded to them by deft Armour & Co. (2)
4-5-55	Enter agreed order amending subpoena duces tecum directed to Henry Giblock, etc. - DRAFT - LaBuy, J. Mld ntcs 4-5-55 H
4-5-55	On respondents motion lv to file amendment to answers of Frank Ciresi to interrogs. -LaBuy, J Mld ntcs 4-6-55
4-5-55	Filed Amendment To Interrogatory Answers previoulsy filed by the pltff Frank Ciresi to interrogs of deft Armour and Co. (1)
4-6-55	plaintiffs motion lv to file amendment to supplemental complaint Draft - LaBuy, J Mld ntcs 4-6-55 d
4-6-55	Filed Notice (2)
4-6-55	Fld Motion pursuant to Civil rule No 4 of the U.S.Dist Court For the Northern Dist of Ill. (3)
4-6-55	Ruling on pltfs objections to interrogs propounded by deft Howes Leather Co contd to April 11,1955 -LaBuy, J Mld ntcs 4-8-55 d
4-7-55	Iss. summons & copy with copy of 2nd amended complt, supplemental complt & amendmt to supp. complt. for service on A. Leveton & Co. mg
4-7-55	Fld Ntc of taking depositions (3)
4-7-55	Fld Ntc & Proof of Service (2)
4-7-55	Fld Motion under Rule 34 for ord. upon Armour & Co. & Howes Leather Co. to produce (6)
4-7-55	Mo. for the production of documents under Rule 34 of the F.R.C.P. entld & contd to April 11, 1955 by agreement. LaBuy-J
4-7-55	Ord. mtr. to Civil Rule No. 4 of the U.S.D.C. for the Nor. Dist. of Ill. DRAFT LaBuy-J Ntcs mld 4-12-55 (2)
4-11-55	Fld Ntc (2)
4-11-55	Fld Motion of Howes Leather Co. mtr. to Rule 30(b) with respect to deposition of Henry F. Keating (4)
4-11-55	Fld Objections of Howes Leather to pltff's mo. (3)
4-11-55	Fld Ntc & proof of service (2)
4-11-55	Fld stip. (1)
4-11-55	Ord. on stip. dis. K. Kaplan Sons & Co. et al with prej. & without costs. DRAFT LaBuy-J Ntcs mld 4-12-55 (1)
4-11-55	Fld Ntc of Motion . see 50 C 229 (2)
4-11-55	Fld Motion under Rule 30(b) . See 50 C 229. (2)
4-11-55	Filed Two Memorandums of Judge La Buy (1)(1) Motion of deft Grippo & Co. to dismiss complt overruled - LaBuy, J. Mld ntcs 4-15-55 H

DATE	FILINGS—PROCEEDINGS
4-11-55	Pltfs objections to interrogs served 3-16-55 by deft Howes Leather Co. overruled and pltfs to answer same in 15 days. Pltf's obj. to interrogs served 3-25-55 by deft Armour & Co. overruled & pltfs to answer same in 15 days. The deposition of Robt L. Aste shall be taken by pltfs at New York, N. Y., etc. and the deposition of Henry F. Keating shall be taken by pltfs at Boston, Mass., etc. Defts Howes Leather Co. and Armour & Co. shall produce certain documents for inspection, etc. by pltfs, etc. - DRAFT - LaBuy, J. Mld ntcs 4-15-55 H
4-13-55	Filed summons retd served 2.50 H
4-15-55	Filed Notice & proof of service (2)(1)
4-15-55	Filed Mo. under Rule 37(d) for an ord. striking the pleadings filed herein by Jack Klinger d/b/a A. Leveton & Co. & for judgment by default against said deft. (2)
4-15-55	Motion under Rule 37(d) for an order striking pleadings of deft Jack Klinger & for judgment by default against said deft. argued & cont'd to April 27, 1955 to allow for service of additional notice on deft for taking of deposition. LaBuy-J Mld ntcs 4-18-55
4-15-55	Filed Notice of taking of depositions & proof of service (2)(1) t
4-19-55	Filed Notice, ~~Motion and Stipulation & proo~~ (also 50 C 229)
"	Filed Motion
"	Arguments heard on motion under Rule 45 (b) to quash or modify the subpoena duces tecum served on M. A. Landberg and hearing adjourned to April 26, 1955 and counsel to submit law citations - LaBuy, J. Mld ntcs 4-21-55
4-20-55	Filed Notice and proof of service, and copy
"	Filed Pltfs' Memo in support of their subpoena duces tecum (5) H
4-21-55	Filed Notice and proof of service
"	Motion of J. Leonard Kovitz for leave to file appearance for deft Jack Klinger and to halt the taking of his deposition noticed for April 21, 1955 contd to April 22, 1955 before Judge LaBuy. - Campbell, J. Mld ntcs 4-22-55 H
4-22-55	Filed Notice and Proof of Service (See 50 C 229) (2)
4-22-55	Arguments hrd. on motion of I. Leonard Kovitz for leave to file appearance for deft. Jack Klinger and to halt the taking of his deposition and hrg. adjourned to April 26, 1955-LaBuy, J. (See 50 C 229) Mld. notices 4-25-55. P
4-25-55	Filed Notice and proof of service (1)
"	Filed Memo of M. A. Landberg in support of his motion to quash etc., and copy (13) H
4-26-55	Fur. arguments heard & advisement on mo. of M.A. Landberg to quash or modify subpoena duces tecum. LaBuy-J
4-26-55	Filed memo (See 50 C 229 for memo)
4-26-55	Leave to file appearance of I. Leonard Kovitz as atty for deft Jack Klinger & postpone taking of deposition to May 9, 1955 & leave to pltffs to withdraw motions under Rule 37(d) DRAFT LaBuy-J Mld ntcs 4-29-55 (1)
4-26-55	Fld appearance and jury demand (1)
4-26-55	Filed Notice & Proof of Service (2)
4-26-55	Filed Answers of pltffs to interrogatories propounded to each of them by deft Howes Leather Co. (3)
4-26-55	Filed Answer of pltffs to second interrogatory propounded by deft Armour & Co. to pltffs & exhibits (5)

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DATE	FILINGS—PROCEEDINGS	
4-29-55	Filed Answers of pltfs to interrogs propounded to each of them by deft Howes Leather co. Inc.	(5)
"	Filed Answer of pltfs to second interrog propounded by deft Armour and Co. to pltfs and exhibits	(5)(9)
"	Filed Notice and proof of service	(1)
"	Filed Jury Demand	(1)
	Order joint motion of all pltfs and defts to vacate order of Feb.24,1955 contd to May 6,1955. Hearing before Master reset, etc. DRAFT - LaBuy, J. Mld ntcs 5-2-55	H
4-29-55	Filed deposition of Henry F. Keating	
5-2-55	Filed Three Notices	
"	Filed Two Motions to dismiss	
"	Order motion that pursuant to Rule 12(b) of the Rules of Civil Procedure, deft A. Leveton Co. be dismissed as deft in above entitled cause taken under advsmt and leave to parties to file briefs and cause contd for hearing to May 6, 1955 - 2 DRAFTS - LaBuy, J. Mld ntcs 5-3-55	H
5-4-55	Filed Pltfs. memorandum in answer to memorandum of deft. A. Leveton Co. to dismiss the cause (see 50 C 229)	
5-5-55	Filed Reply of deft. A. Leveton Co. to memorandum of pltfs.	
5-4-55	Filed Notice and Proof of Service of pltfs. memorandum	(2) P
5-6-55	Filed Notice	(2)
5-6-55	Filed Notice and Proof of Service (See 50 C 229)	(1)
5-6-55	Arguments hrd. on motion of deft. A. Leveton Co. for dismissal under Rule 12 (b) and advisement-LaBuy, J. (See 50 C 229)	
5-6-55	Arguments hrd. on joint motion of all parties in each of cases to vacate order of reference to Master entd. Feb. 24, 1955 and advisement-LaBuy, J. (see 50 C 229) Mld. notices 5-9-55.	P
5-6-55	Mo. of A. Deveton Co. to dis. sustained & cause as to it is dismissed. Motions to vacate ord. referring cause to master are overruled. LaBuy-J Mld ntcs 5-10-55	t
5-18-55	Filed Notice and Proof of Service	(3)
5-18-55	Filed motion for order under Rule 37 for a Rule to show cause why the deft. Jack Klinger d/b/a A. Leveton & Co. should not be held in contempt of Court	(3) and Exhibits $15.00
5-18-55	Enter order under Rule 37 for rule to show cause why deft. Jack Klinger should not be held in contempt. Leave to respondent to answer in 30 days and hrg. on rule and answer set for June 29, 1955-LaBuy, J. (see 50 C 229) Mld. notices 5-20-55.	P
5-20-55	Filed deposition of Jack Klinger	
5-25-55	Filed Stipulation.	(1)
5-25-5	Order stipulation to dismiss certain parties deft. with prejudice and without costs Draft - LaBuy, J Mld ntcs 5-26-55	d
5-18-55	Filed Appearance of attys. for Griffin Mfg. Co.	(1) P

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337 Clerk's Certificate to foregoing papers omitted in printing.

338 **Exhibit "B" to Answer**

In the United States District Court
Northern District of Illinois
Eastern Division

No. 50 C 844

NORMAN P. SHAFFER and BRUCE R. SHAFFER, co-partners, d/b/a NORMAN P. SHAFFER & SON: EDWARD J. SCHMIDT, d/b/a E. J. SCHMIDT CO.; EDWARD F. HEIDENREICH & SONS, INC.; JACK BIONDI and TONY BIONDI, co-partners, d/b/a BIONDI BROS. LEATHER & FINDINGS; WILLIAM G. DEARHAMMER and C. DORI AND GLASS, co-partners d/b/a DEARHAMMER & GLASS; S. J. C. SUPPLY HOUSE, INC.; KINDSCHI LEATHER CO., INC.; RUTH HOLMAN, d/b/a SHEBOYGAN LEATHER COMPANY and FRANK CIRESI, PLAINTIFFS

VS.

UNITED STATES RUBBER CO., A Corp.; CAT'S PAW RUBBER CO., INC.; THE HOLTITE MANUFACTURING CO., A Corp.; BILTRITE RUBBER CO., A Corp.; PANTHER-PANCO RUBBER CO., A Corp.; ESSEX RUBBER CO., A Corp.; and GOODYEAR TIRE AND RUBBER CO., INC.

HOWES LEATHER COMPANY, INC., and ARMOUR AND COMPANY, A Corp.;

GRIFFIN MANUFACTURING CO., A Corp.; KNOMARK MANUFACTURING CO., A Corp.; PANDA CORPORATION and BEST FOOD PRODUCTS CO.;

THE CARBORUNDUM CO.; BEHR-MANNING CORP.

PUBLIC SHOE SERVICE CORP.; DAN GRIPPO, d/b/a GRIPPO & CO.; JACK KLINGER, d/b/a A. LEVITON CO.; K. KAPLAN SONS & CO.; RUDOLPH E. KAPLAN, ELI KAPLAN, J. GILBERT KAPLAN, RUBEN CHUPAK, d/b/a REICK-LANGENDORF CO.; ROCKFORD FINDINGS & LEATHER CO., SPRINGFIELD LEATHER STORE, DEFENDANTS

SECOND AMENDED COMPLAINT—FILED JAN. 7, 1953

NOW COME THE PLAINTIFFS set forth in the caption above, by their attorneys, FRANCIS HEISLER, PEARL BAER and RICH-

ARD ORLIKOFF, pursuant to leave of Court heretofore granted, and present herewith their Second Amended Complaint and complain of the defendants set forth in the caption above and for cause of action say:

COUNT I

1. Plaintiffs NORMAN P. SCHAFFER and BRUCE R. SCHAFFER, at all times hereinafter mentioned were co-partners doing business under the name NORMAN P. SCHAFFER & SON.
339 Since January 1, 1945, the plaintiffs, as co-partners, have operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 687 Milwaukee Avenue in Chicago, Illinois. Plaintiffs are commonly referred to in the shoe trade as "leather and shoe finders". The aforesaid items of shoe supply are sometimes hereinafter referred to collectively as "leather and shoe findings."

2. This action arises under Sections 1, 2, 4, 5 & 7 of the Act of July 2, 1890, Chapter 647, 26 Stat. 209 as Amended, 15 U. S. Code, Sec. 1 et seq. (commonly known as the Sherman Anti-Trust Act); and this action further arises under Sec. 1, 12 and 16 of the Act of October 15, 1914, Chapter 323, 38 Stat. 730 as Amended; 15 U. S. Code, Sec. 12-27; 18 U. S. Code, Sec. 402 (commonly known as the Clayton and the Robinson-Patman Acts), and hereinafter referred to as the "Acts".

3. The defendants named in this paragraph are "manufacturers" of rubber goods, commonly used in the shoe repair trade, and these defendants are engaged in the shipping and distributing of the rubber goods manufactured by them throughout various parts of the United States, including Illinois. The manufacture, transportation and distribution of such rubber goods by the defendants named in this paragraph is done either directly or through subsidiary or associated companies. These defendants will be referred to herein collectively as "rubber goods manufacturers". The name, place of business, trade named used (if any), and the state of incorporation (if incorporated) of each such defendant appears in Table I below:

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Table I

Name	Address of Principal Office	Trade Name	State of Incorp.
Cat's Paw Rubber Co., Inc.	Warner & Ostend Baltimore 30	Same	Md.
The Holtite Manufacturing Co., a Corporation	Warner & Ostend Baltimore 30	Same	Md.
United States Rubber Co., a Corporation	1230 6th Ave. of Americas, NYC	Same	N. J.
Essex Rubber Co., a Corp.	May & Beake Trenton, N. J.	Same	N. J.
Biltrite Rubber Co., a Corp.	Chelsea 50, Mass.	Same	Mass.
Panther-Panco Rubber Co., a Corporation	34 Hiland Street Chelsea, Mass.	Same	Mass.
Goodyear Tire & Rubber Co., Inc.	Akron, Ohio,	Same	Ohio

4. The defendants named in this paragraph are manufacturers of leather goods commonly used in the shoe repair trade; these defendants are engaged in the shipping and distributing of the leather goods manufactured by them throughout various parts of the United States, including Illinois. The manufacture, transportation and distribution of such leather goods by the defendants named in the paragraph is done either directly or through subsidiary or associated companies and these defendants will be referred to herein collectively as "leather goods manufacturers". The name, place of business, trade name used (if any), and the state of incorporation (if incorporated) of each such defendant appears in Table II below:

Table II

Name	Address of Principal Office	Trade Name	State of Incorp.
Howes Leather Co., Inc.	325 Summer St. Boston, Mass.	Same	Mass.
Armour Leather Co., a Corp.	173-5 N. Franklin Chicago, Ill.	Same	Ill.

5. The defendants named in this paragraph are manufacturers of shoe polish commonly used in the shoe repair trade, and these defendants are engaged in the shipping and distributing of shoe polish manufactured by them throughout various parts of the United States, including Illinois. The manufacture, transportation and distribution of shoe polish by the defendants named in this paragraph is done either directly or through

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subsidiary or associated companies and these defendants will be referred to herein collectively as "shoe polish manufacturers". The name, place of business, trade name used (if any), and the state of incorporation (if any) of each such defendant appears in Table III below:

Table III

Name	Address of Principal Office	Trade Name	State of Incorp.
Griffin Mfg. Co., a Corporation	410–424 Willoughby Ave., Brooklyn 5	Same	N. Y.
Knomark Mfg. Co., a Corporation	330 Wythe Avenue Brooklyn, N. Y.	Same	N. Y.
Panda Corporation	922 N. 4th St. Milwaukee, Wisc.	Same	Wisc.
Best Foods Products Co.	1 E. 43rd, NYC	Same	N. Y.

6. The defendants named in this paragraph are the owners and operators of chain repair stores wherein shoe repair services are offered to the public. These defendants also are engaged in the sale and distribution of retail merchandise appertaining to shoe services. These defendants purchase merchandise manufactured and/or sold by the defendants described in paragraph 3, 4 and 5 above. These defendants are referred to herein collectively as "department or chain stores". The name, place of business, trade name used (if any) and the state of incorporation (if incorporated) of each such defendant appears in Table IV below:

Table IV

Name	Address of Principal Office	Trade Name	State of Incorp.
Public Shoe Service Corp.	120 S. LaSalle, Chicago	Same	Ill.
Dan Grippo, d/b/a Grippo & Company	202 S. State St. Chicago, Illinois	Same	Ill.

7. The defendants named in this paragraph are wholesalers or jobbers of shoe materials and supplies and are commonly known to the shoe trade as "finders". These defendants purchase merchandise from various of the defendant manufactures described in paragraphs 3, 4 and 5 above, and/or distribute the merchandise manufactured by various of the aforesaid defendant manufacturers.

342–345 These defendants sell and /or deliver shoe supplies to department or chain stores in various parts of the United States, including the defend-

ant department or chain stores, and these defendants further sell and/or deliver shoe supplies to independent retail stores in the United States. These defendants are sometimes referred to collectively herein as "preferred finders". The name, place of business, trade name (if any), and the state of incorporation (if incorporated) of each such defendant appears in Table V below:

Table V

Name	Address of Principal Office	Trade Name	State of Incorp.
Jack Klinger, d/b/a A. Leviton	711 W. Roosevelt Rd. Chicago, Illinois	Same	—
K. Kaplan Sons & Co.	711 N. Milwaukee Ave. Chicago, Illinois	Same	Ill.
Rudolph E. Kaplan, Eli Kaplan, J. Gilbert Kaplan, Ruben Chupak d/b/a Reick-Langendorf Co.	31 S. Wells Street	Same	—
Rockford Findjngs & Leather Co.	315 S. Main St. Rockford, Ill.	Same	Ill.
Springfield Leather Store	223 N. Fifth St. Springfield, Ill.	Same	Ill.

8. Certain of the defendants, i.e. those whose names appear in this paragraph, are manufacturers of abrasives sold by said defendants through their representatives, among them, MANDUS NELSO and BEN MARDER COMPANY. The plaintiffs purchased such abrasives manufactured by the defendants named in this paragraph through their representatives, and said abrasives so purchased were sold by the plaintiffs in their regular course of business—the name, the place of business, the trade name used (if any) by such defendants, and the corporate or other setup appear in Table VI below:

Table VI

Name	Address of Principal Office	Trade Name	State of Incorp.
The Carborundum Company	305 Buffalo Ave. Niagara Falls, N. Y.	Same	N. Y.
Behr-Manning Corp.	21 Westover Rd. Troy, New York	Same	N. Y.

346 9. The shoe leather, rubber goods, abrasives and shoe polish that are distributed in Illinois by the defendants named in paragraphs 3, 4 and 5 and 8 are manufactured almost entirely in States other than Illinois and is shipped across state lines in order to be distributed in Illinois.

10. Shoe leather, rubber goods and shoe polish manufactured by the defendants named in paragraphs 3, 4 and 5 above are distributed by these defendants to "finders", wholesalers or jobbers throughout the United States, including the defendants "finders", and these defendant manufacturers further distribute the aforementioned products to department or chain stores throughout the United States, including the defendant department or chain stores, and the defendant manufacturers further distribute the aforementioned products to independent shoe repair stores throughout the United States.

11. The defendant leather goods manufacturers, rubber goods manufacturer, abrasive manufacturers and shoe polish manufacturers occupy a monopolistic position in the manufacture and distribution of the aforementioned products in the United States, and this monopolistic position enables these defendants to monopolize and to restrain trade in the aforementioned products in Chicago, Illinois.

12. The defendant "preferred finders", listed in paragraph 7 above are, and at all times hereinafter mentioned were in competition with other leather and shoe finders, including plaintiff, in the business of supplying leather and shoe findings to retail shoe repair stores, and other consumers of such supplies in Illinois and Wisconsin, and in other states. Such leather and shoe findings are purchased by the finders from manufacturers, including the defendant manufacturers, and shipped from without the state of Illinois to the defendant finders and the plaintiff in Ilinois.

13. During the period from January 1, 1945 to the time of the filing of this action, shoe supplies were dis-
347 tributed in Chicago in the following manner:

A. The defendant manufacturers each maintained a sales force to sell and to distribute the product manufactured by it. These dependants employed salesmen who called upon "finders" and retail shoe service stores for the purpose of selling to them the products manufactured by the

defendants. In the shoe industry such salesmen are called "missionaries". Retail shoe supply stores placed their orders for shoe supplies with the "missionaries" who called upon them. The defendant manufacturers then filled these orders either by delivering the ordered supplies directly to the retailer, which delivery is termed a "drop shipment" in the shoe repair industry or by placing the order with a "finder" for delivery to the retailer. Payment for the order was made by the retailer either directly to the manufacturer or payment was made to the "finder" who was designated by the parties at the time the order was placed. In the latter case, the "finder" then made payment to the manufacturer for such shipment, after deducting from the sales price a "finder's commission".

B. The shoe and leather finders maintain sales forces to sell and distribute shoe and leather findings to retail shoe service stores. The finders, in many instances, purchase their requirements directly from the manufacturers and sell directly to retailers.

14. During the period from January 1, 1945 to the time of the filing of this action, and prior thereto and since, the defendants "rubber goods manufacturers", (named in paragraph 3 (Table I)), the defendants "leather goods manufacturers", (named in paragraph 4, (Table II)); the defendants "shoe polish manufacturers", (named in paragraph 5 (Table III)); and the defendant "abrasive manufacturers" (named in paragraph 8 (Table VI)) have contracted, combined and conspired with the defendant "finders" (named in paragraph 7 (Table V)) and with the defendants "department or chain stores" (named in paragraph 6 (Table IV)) and with each other and with other persons and corporations whose names are unknown to the plaintiffs to monopolize and to attempt to monopolize the sale of shoe-repair supplies as leather and rubber heels, leather and rubber soles, shoe polish and other merchandise pertaining to shoe-repair service in the City of Chicago and in the adjoining areas, and they further combined and conspired to restrain trade and to suppress competition in the sale of "shoe supplies" in interstate trade and commerce, in violation of the provisions of the Acts hereinabove referred to, in the following manner:

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15. The defendants established and maintained a fixed,

uniform and rigid system of pricing and distributing leather and shoe findings for the purpose of monopolizing and restraining trade in the manufacture and sale of leather and shoe findings.

16. By means of the arbitrary method of distributing shoe repair supplies established by the defendants in the City of Chicago the plaintiff "finder" was restrained and prevented from purchasing leather and shoe findings manufactured by the defendant manufacturers named herein, from any of said defendant manufacturers or from any source whatsoever, at a price as low as that paid by plaintiff's competitors, the defendant "finders" and department and chain stores for leather and shoe findings of the same grade and quality.

17. The prices, terms and conditions of sale at which leather and shoe findings were sold by the defendant manufacturers to the defendant finders and the defendant department and chain stores, were established, fixed and maintained at a lower figure than the price charged to the plaintiffs, such price differential having no relationship whatsoever to cost savings in the selling of said merchandise.

18. The defendants established a system of discounts and rebates whereby the defendant manufacturers granted to the defendant finders and department and chain stores rebates and discounts on the sale of leather and shoe findings. Such rebates and discounts were much greater than any
349 discount or rebate offered to, available to, or granted to independent finders, including plaintiff, for the purchase of materials of the same grade and quality.

19. The price at which independent finders, including plaintiff, were permitted to purchase leather and shoe findings was arbitrarily fixed by the defendants at a high and unreasonable level to prevent and to restrain competition between the defendant finders and department and chain stores and independent finders, including the plaintiff.

20. The salesmen or "missionaries" employed by the defendant manufacturers to sell their products regularly called upon independent shoe repair stores for the purpose of selling such stores the product of the manufacturer. The defendant manufacturers' salesmen, if given an order by the independent shoe repair stores, would and did bill the shoe repair store through one of the "preferred" defendant

finders: That is, the invoice for such order was made payable to one of the defendant finders, or the order was placed for delivery with one of the defendant finders. On all such orders the defendant finders received a "finder's" commission, even though they had not taken the order nor, in many cases, handled the merchandise. Such orders never were placed through independent finders, such as the plaintiff.

21. The defendant finders and department and chain stores together with other "preferred finders" throughout the nation, control the operation and policies of the Shoe Service Institute of America, previously known as the Leather and Shoe Finders Association. The defendants utilized the Shoe Service Institute to effectuate the discriminatory price structure and the rebate plan set forth hereinabove.

22. The afore-described combination and conspiracy was made for the purpose of restraining the sale of shoe leather and shoe findings in interstate commerce, and such restraint was made with the intent and effect of injuring independent finders, including the plaintiff, and preventing such finders from effectively competing with the defendant finders and the defendant department and chain stores, in violation of the anti-trust laws of the United States.

23. Each defendant manufacturer granted the unreasonable, arbitrary and illegal rebates and discounts described above, and each defendant finder and defendant chain and department store induced and received said rebates and discounts in violation of the Robinson-Patman Act, 15. U.S.C. Sec. 12-27.

24. The larger discounts and rebates granted by the defendant manufacturers to the defendant finders and to the defendant chain or department stores for the purchase of shoe supplies of the same grade and quality as that purchased from the defendant manufacturers by independent finders, including plaintiff, which discounts and rebates are described in paragraphs 16, 17, 18 and 19 of this Second Amended Complaint, were not justified by savings in the cost of manufacture by the defendant manufacturers of leather and shoe findings, nor were the larger discounts and rebates justified by savings on economies effected by the defendants in the sale or delivery of leather and shoe find-

ings to the defendant finders and to the defendant chain or department stores.

25. As a direct result of the aforesaid violations of the anti-trust laws, the defendant finders and the defendant chain and department stores were able to increase the volume of their sales of leather and shoe findings, at the expense and consequent injury to independent finders, including plaintiff.

26. The defendant manufacturers and finders have sold large quantities of shoe materials and supplies to the defendant chain or department stores and to the defendant "finders" at prices lower than the prices charged "finders", including the plaintiff. The exact and specific terms of such sales and the exact amount of shoe materials and supplies sold and the names of the persons effecting such sales are all facts which lie peculiarly within the knowledge of the
351 defendants, and are not known by plaintiff, and for that reason plaintiff is unable to allege said facts specifically. However, plaintiff says that such rebates and discounts were not less than 10% of the price paid by plaintiff for similar materials, and plaintiff believes that the illegal rebates and discounts averaged 12½% of his purchases.

27. As a result of the violations of the anti-trust laws set forth hereinabove, the plaintiff has suffered both "general" and "special" damages. The "general" damages of plaintiff have been the decrease in the share of the business of selling leather and shoe findings at wholesale in Illinois and Wisconsin, and surrounding communities, and the decrease in the volume of business and lowered profits, together with the loss of capital investment, all of which have been experienced by the plaintiff as a result of the violations of the anti-trust laws by the defendants which are set forth hereinabove. The "special" damages which plaintiff has suffered have been the higher prices plaintiff has been forced to pay for leather and shoe findings of the same grade and quality as those supplies sold to plaintiff's competitors, the defendant "finders" and the defendant "chain or department stores."

28. Since the commencement of this action the violations of the anti-trust laws complained of herein have continued, causing further and great injury to the plaintiff. Plaintiff will, at a future date, but prior to the trial of this action,

request leave of this Court to file a Supplemental Complaint setting forth additional violations of the anti-trust laws by the defendants and additional injury plaintiff has suffered as a result of such additional violation.

WHEREFORE, plaintiff prays that:

A. A judgment may be entered against defendants and each of them jointly and severally, and in favor of the plaintiff, for treble the damages which plaintiff has suffered as a result of the foregoing acts of the defendants, and
352 that in addition there be allowed by the Court to plaintiff a reasonable attorneys' fee and its costs, as is provided in the Statute.

B. Plaintiff further prays that the Court order the defendants and each of them to make a full accounting of all discriminatory price differentials allowed by them to the defendants "finders" named in paragraph 7 (Table V), and to the defendant "department or chain stores" named in paragraph 6 (Table IV), and that said defendant "finders" and "department or chain stores" make a full accounting of all discriminatory price differentials received by them from any of the other defendants.

C. That an order may be entered by this Honorable Court that the defendants herein and each of them and all of their respective officers, directors, agents and all persons acting or claiming to act on behalf of the defendants or any of them be permanently enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, any attempts at monopolization of the shoe-repair industry by confederation agreements, combinations and conspiracies or by means of other unlawful acts, and that they be permanently enjoined in engaging in acts in restraint of interstate trade and commerce, including the granting and receiving of discriminatory rebates and setting of discriminatory prices in the leather and shoe-finding industry. And the plaintiff prays that such further and other orders may be entered as the Act provides and justice requires.

COUNT II

29. Plaintiff EDWARD J. SCHMIDT, d/b/a E. J. SCHMIDT Co. since January 1, 1945, has operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe

polish, shoe findings, abrasives and shoe accessories at 1640 S. Pulaski Road, in Chicago, Illinois. Plaintiff is commonly referred to in the shoe trade as a "leather and shoe finder."

653 The aforesaid items of shoe supply are sometimes hereinafter referred to collectively as "leather and shoe findings."

30. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 28, inclusive of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

COUNT III

31. Plaintiff EDWARD F. HEIDENREICH & SONS, INC., since January 1, 1945, has operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 4840 South Ashland Avenue, in Chicago, Illinois. Plaintiff is commonly referred to in the shoe trade as "leather and shoe finder." The aforesaid items of shoe supply are sometimes hereinafter referred to collectively as "leather and shoe findings."

32. Plaintiff here repeats and realleges as though fully set out and herein contained paragraphs 2 to 28, inclusive, of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

COUNT IV

33. Plaintiffs JACK BIONDI and TONY BIONDI, as co-partners, d/b/a BIONDI BROS. LEATHER AND FINDINGS, since January 1, 1945, have operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 3731 West Grand Avenue, in Chicago, Illinois, as co-partners.

Plaintiffs are commonly referred to in the shoe trade as "leather and shoe finders." The aforesaid items of
354 shoe supply are sometimes hereinafter referred to collectively as "leather and shoe findings."

34. Plaintiffs here repeat and reallege as though fully set out and herein contained, paragraphs 2 to 28, inclusive of Count I of this Second Amended Complaint.

WHEREFORE, plaintiffs pray that:

A. Plaintiffs here repeat and incorporate, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

COUNT V

35. Plaintiffs WILLIAM G. DEARHAMMER and C. DORLAND GLASS, as co-partners, d/b/a DEARHAMMER & GLASS, since January 1, 1945, have, as co-partners, operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 3954 Avondale Avenue, in Chicago, Illinois. Plaintiffs are commonly referred to in the shoe trade as "leather and shoe finders." The aforesaid items of shoe supply are sometimes hereinafter referred to collectively as "leather and shoe findings."

36. Plaintiffs here repeat and reallege as though fully set out and herein contained, paragraphs 2 to 28, inclusive of Count I of this Second Amended Complaint.

WHEREFORE, plaintiffs pray that:

A. Plaintiffs here repeat and incorporate, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

COUNT VI

37. Plaintiff S. J. C. SUPPLY HOUSE, INC., since January 1, 1945 has operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 882-4 Milwaukee Avenue, Chicago, Illinois. Plaintiff is commonly referred to in the shoe trade as a "leather and shoe finder." The aforesaid items of shoe supply are sometimes hereinafter referred to

collectively as "leather and shoe findings."

355 38. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 28, inclusive of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

COUNT VII

39. Plaintiff KINDSCHI LEATHER CO., INC., since January 1, 1945, has operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 120 South Pinckney, in Madison, Wisconsin. Plaintiff is commonly referred to in the shoe trade as a "leather and shoe finder." The aforesaid items of shoe supply are sometimes hereinafter referred to collectively as "leather and shoe findings."

40. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 28, inclusive of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

COUNT VIII

41. Plaintiff RUTH HOLMAN, d/b/a SHEBOYGAN LEATHER COMPANY, since January 1, 1945, has operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 1214 Michigan Avenue, in Sheboygan, Wisconsin. Plaintiff is commonly referred to in the shoe trade as a "leather and shoe finder." The aforesaid items of shoe supply are sometimes hereinafter referred to collectively as "leather and shoe findings."

356-357 42. Plaintiff here repeats and realleges as though fully set out herein contained, paragraphs 2 to 28, inclusive, of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

COUNT IX

43. Plaintiff FRANK CIRESI, since January 1, 1945, has operated a wholesale business for the sale and distribution of shoe rubber, shoe leather, shoe polish, shoe findings, abrasives and shoe accessories at 1847 North 75th in Elmwood Park, Illinois. Plaintiff is commonly referred to in the shoe trade as a "leather and shoe finder". The aforesaid items of shoe supply are sometimes referred to collectively as "leather and shoe findings."

44. Plaintiff here repeats and realleges as though fully set out and herein contained, paragraphs 2 to 28, inclusive of Count I of this Second Amended Complaint.

WHEREFORE, plaintiff prays that:

A. Plaintiff here repeats and incorporates, as though fully set out and herein contained paragraphs A, B and C of the prayer of Count I of this Second Amended Complaint.

Respectfully submitted,

FRANCIS HEISLE
RICHARD ORLIKOFF
PEARL BAER
Attorneys for Plaintiffs

Chicago, Illinois
December 17, 1952

358 **Exhibit "C" to Answer**

In the United States District Court
Northern District of Illinois
Eastern Division

No. 50 C 844

NORMAN P. SHAFFER AND BRUCE R. SHAFFER, co-partners d/b/a NORMAN P. SHAFFER & SON, ET AL., PLAINTIFFS,

vs.

UNITED STATES RUBBER CO., A CORPORATION, ET AL., DEFENDANTS

ANSWER OF ARMOUR AND COMPANY, A CORPORATION, TO PLAINTIFFS' SECOND AMENDED COMPLAINT—
Filed March 31, 1953

Now comes Armour and Company, a corporation, defendant, by Weymouth Kirkland, A. L. Hodson, Walter E. Tinsley, Frederick R. Baird and Arthur F. Rackerby, its attorneys, and answering the Second Amended Complaint of plaintiffs, defendant says:

COUNT I

1. It is without knowledge or information sufficient to form a belief as to the truth of the averments set out in paragraph 1, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

2. It denies that, in the conduct of its business, it has done anything or committed any acts which would give rise to any action against it under any or all of the various laws set forth in paragraph 2, and therefore denies the averments of paragraph 2 of Count I.

359 3. It is without knowledge or information sufficient to form a belief as to the truth of the averments set out in paragraph 3, and therefore, having no knowledge, information or belief as to the truth of the averments, denies them.

4. As to paragraph 4, it admits that it is a manufacturer of leather goods, some of which are commonly used in the shoe repair trade. It admits that it is engaged in shipping and distributing its leather goods throughout various parts

of the United States, including Illinois. It denies that it manufactures, transports or distributes any of its leather goods through any subsidiary or any associated companies. It admits that defendant, Armour and Company, herein sued as Armour Leather Co., is located at 173-5 North Franklin Street, Chicago, Illinois, and is incorporated under the laws of the State of Illinois.

In so far as the allegations of paragraph 4 relate to other defendants, it says it is without knowledge or information sufficient to form a belief as to the truth of the averments, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

5. It is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 5, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

6. It denies that the defendant department or chain stores purchase, or ever purchased, merchandise from this defendant. As to the remaining allegations of paragraph 6, it is without knowledge or information sufficient to form a belief as to the truth of the averments, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

360 7. It admits that the defendants named in paragraph 7 of Count I are wholesalers or jobbers of shoe materials and supplies and are commonly known to the shoe trade as "finders." It admits that it sells leather merchandise to some finders, including some of the finders named in paragraph 7. Upon information and belief, it believes that finders, including defendant finders, sell and deliver certain leather products manufactured by this defendant to retail stores, department stores and chain stores. As to the remaining allegations of paragraph 7, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

8. It is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 8, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

9. It admits that its leather products are in a large part

manufactured outside of the State of Illinois, and that some are shipped into Illinois and distributed within Illinois. As to whether or not the allegations in paragraph 9 as to the other defendants are true or not, this defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

10. As to paragraph 10, it admits that, throughout the United States, it sells certain of its leather products
361 to wholesalers, finders or jobbers, including some of the defendant "finders." It denies that, throughout the United States, it has sold or now sells any of its products to department or chain stores, including the defendant department or chain stores. It denies that, throughout the United States, it has sold or sells any of its products to independent shoe repair stores. It denies the allegations of paragraph 10. It is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10, as to the other defendants, and therefore denies them.

11. It denies all of the allegations of paragraph 11, and it denies that it, by itself or in conjunction with or in association with any leather goods manufacturer, rubber goods manufacturer or shoe polish manufacturer, occupies or ever did occupy a monopolistic position in the manufacture or distribution of leather, rubber or polish goods in the United States, and denies that any such alleged monopolistic position enabled this defendant, either by itself or in conjunction with or association with any other leather, rubber, or polish manufacturer, to monopolize or restrain trade in the named products in Chicago, Illinois, or anywhere else in the United States.

12. It is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 12, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them. This defendant, however, admits that it has sold leather findings to finders and shipped same from without the
362 State of Illinois to defendant finders and to all of the plaintiffs except Dearhammer and Glass.

13. It admits that it maintained a sales force who sold

and who sell "finders" the products manufactured by it. It denies that it sold or distributed shoe supplies in Chicago in the manner described in paragraph 13 of Count I and therefore it denies each and every remaining allegation of this paragraph. As far as the averments in this paragraph relate to other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies them.

14. As to paragraph 14, it denies that it has contracted, combined or conspired with the defendant manufacturers, defendant finders, or defendant department or chain stores, or any other person or corporations named or unnamed, to monopolize or to attempt to monopolize the sale of any shoe repair supplies in the City of Chicago, in the adjoining area or areas, or in any other part of the United States, and it further denies that it has combined or conspired with any codefendant or any other person or corporation named or unnamed to suppress competition in the sale of shoe supplies in interstate trade or commerce in violation of the laws of the United States in any manner whatsoever.

15. It denies each and every allegation of paragraph 15 in so far as they relate to this defendant, and states that it has no knowledge or information sufficient to form a belief as to the truth of the averments in so far as they pertain to other defendants and therefore, denies them.

363 16. It denies each and every allegation of paragraph 16 in so far as they relate to this defendant, and states that it has no knowledge or information sufficient to form a belief as to the truth of the averments in so far as they pertain to other defendants, and therefore denies them.

17. It denies each and every allegation of paragraph 17 in so far as they relate to this defendant, and states that it has no knowledge or information sufficient to form a belief as to the truth of the averments in so far as they pertain to other defendants, and therefore denies them.

18. It denies each and every allegation of paragraph 18 in so far as they relate to this defendant, and states that it has no knowledge or information sufficient to form a belief as to the truth of the averments in so far as they pertain to other defendants, and therefore denies them.

19. It denies each and every allegation of paragraph 19 in so far as they relate to this defendant, and states that it

has no knowledge or information sufficient to form a belief as to the truth of the averments in so far as they pertain to other defendants, and therefore denies them.

20. It denies the allegations of paragraph 20 in so far as they relate to this defendant. It says that it has no knowledge or information sufficient to form a belief as to the truth of the averments in so far as they pertain to the other defendants, and therefore denies them.

21. In so far as the allegations of paragraph 21 relate to other defendants, it says it is without knowledge or information sufficient to form a belief as to the truth of the
364 averments and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them. It denies that it utilized or anyone else in conjunction with this defendant utilized the Shoe Service Institute to effectuate any discriminatory price structure or rebate plan whatsoever.

22. It denies each and every allegation contained in paragraphs 22, 23, 24, 25, 26 and 27 in so far as they pertain to this defendant. In so far as the allegations of said paragraphs relate to other defendants it says it is without knowledge or information sufficient to form a belief as to the truth of the averments and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

23. It denies each and every allegation contained in paragraph 28 of said complaint. Wherefore, this defendant, Armour and Company, a corporation, denies that the plaintiff named in this Count is entitled to any relief prayed for in paragraphs A, B and C of his prayer for relief, and prays that it be dismissed as a defendant at plaintiffs' costs.

Counts IV to IX

1. It is without knowledge or information sufficient to form a belief as to the truth of averments set forth in the first paragraph of each of said Counts IV to IX, inclusive, and therefore, having no knowledge, information or belief as to the truth of the alleged facts, denies them.

2. It repeats and realleges as though fully set out paragraphs 2 to 23, inclusive, of its answer to paragraphs 2 to

28, inclusive, of Count I of the Second Amended Com-
365 plaint as its answer to the second paragraph of Counts IV to IX, inclusive.

3. It further denies that the plaintiffs named in Count VI made any purchases whatsoever from this defendant.

4. It denies plaintiffs in Counts IV to IX are entitled to the relief prayed for in said Counts and prays that it be dismissed as a defendant at plaintiffs' costs.

Additional Defenses to Count I and Counts IV to IX, Inclusive, of Second Amended Complaint

First Additional Defense

The Second Amended Complaint, and each and every Count thereof, fails to state a claim against defendant, Armour and Company, upon which relief can be granted.

Second Additional Defense

As to each and every Count of the Second Amended Complaint, this defendant pleads Chapter 83, Section 15, of the Illinois Revised Statutes 1951, which provides:

> "Sec. 14. Actions of damages for an injury to the person, or for false imprisonment or malicious prosecution or for a statutory penalty, or for abduction, or for seduction, or for criminal conversation shall be commenced within two years next after the cause of action accrued."

This defendant says that all claims asserted by the plaintiff named in each Count of the Second Amended Complaint which occurred more than two years prior to the date said plaintiff commenced this proceeding are barred by virtue of the above quoted statute.

366-367 ### Third Additional Defense.

As to each and every count of the Second Amended Complaint, this defendant states that any differential in price, if any, at which it sold its leather goods of same or like grade or quality to its purchasers was (1) occasioned by or in response to changing conditions affecting the market for, or the marketability of, its leather products, (2) occasioned by

lowering its price in good faith to meet an equally low price of a competitor, or (3) occasioned by making due allowance for differences on savings in the cost of manufacture, sale or delivery.

WHEREFORE, this defendant, Armour and Company, having fully answered the Second Amended Complaint herein, prays that said complaint, and each and every Count thereof be dismissed and that it go hence with its costs.

WEYMOUTH KIRKLAND
A. L. HODSON
WALTER E. TINSLEY
FREDERICK R. BAIRD
ARTHUR F. RACKERBY
33 North LaSalle Street,
Chicago 2, Illinois
Telephone: Randolph 6-2929
Attorneys for Armour and Company, a corporation

Dated: March 31, 1953

Of Counsel:

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS
33 North LaSalle Street
Chicago 2, Illinois

368 **Exhibit "D" to Answer**

United States District Court
Northern District of Illinois
Eastern Division

No. 50 C 844

NORMAN P. SHAFFER, ET AL., PLAINTIFFS,

vs.

UNITED STATES RUBBER CO., A CORPORATION, ET AL., DEFENDANTS

ANSWER OF DEFENDANT, GRIFFIN MANUFACTURING CO., TO SECOND AMENDED COMPLAINT—Filed April 1, 1953

Now comes GRIFFIN MANUFACTURING CO., a corporation, one of the defendants herein, by its attorneys, H. Templeton Brown, Edmund A. Stephan and Newton N. Minow, and

for its answer to the Second Amended Complaint filed by the plaintiffs herein, alleges as follows:

AS TO COUNT I

First Defense

1. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1.

2. Paragraph 2 alleges only conclusions of law and this defendant is not required to plead thereto.

3. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 3.

369 4. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 4.

5. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 5, except that it admits that the defendants named in said paragraph are manufacturers of shoe polish commonly used in the shoe repair trade, admits that it ships and distributes shoe polish manufactured by it throughout various parts of the United States, including Illinois, admits that the manufacture and distribution of shoe polish is done by it, denies that the manufacture, transportation and distribution of shoe polish is done through subsidiary or associated companies, denies that its trade name is "Griffin Mfg. Co.", admits that the address of its principal office is 410-424 Willoughby Avenue, Brooklyn 5, New York, and admits that it is incorporated under the laws of the State of New York.

6. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 6, except that it denies that any of the defendants named in said paragraph purchase merchandise from this defendant.

7. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7, except that it admits that the defendants named in said paragraph are wholesalers

370 or jobbers of shoe materials and suppliers and are commonly known in the shoe trade as "finders" and

that said defendants from time to time purchase merchandise from this defendant and sell and distribute the same to various department stores, chain stores and other retail stores in the United States.

8. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, except that it admits that it manufactures shoe polish in a state other than Illinois and that such shoe polish is shipped across state lines in order to be distributed in Illinois.

10. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, except that this defendant admits that products manufactured by it are sold and distributed to various wholesalers throughout the United States, including the defendant finders, and to various chain and department stores throughout the United States, but not including any of the defendant chain or department stores. Defendant denies that it distributes its products to independent shoe repair stores throughout the United States and denies that it distributes its products to chain or department stores except such as operate at least five
371 units and maintain warehousing facilities.

11. This defendant denies that it occupies a monopolistic position in the manufacture and distribution of shoe polish or any other product in the United States and denies that any monopolistic position enables it to monopolize and to restrain trade in shoe polish or any other product in Chicago, Illinois, and with respect to all other averments of paragraph 11 defendant states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

12. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12, except that it admits that leather and shoe findings are purchased by the defendant finders and by the plaintiff from this defendant and shipped

from without the State of Illinois to the defendant finders and the plaintiff in Illinois.

13. Defendant denies that during the period from January 1, 1945 to the time of the filing of this action it distributed shoe supplies in Chicago in the manner stated in paragraph 13(A) of said complaint; denies that it employed salesmen who called upon retail stores for the purpose of selling to them products manufactured by defendant; denies that it filled orders from retail shoe service stores either by delivering the ordered supplies directly to the retailer
372 or by placing the order with a "finder" for delivery to the retailer; denies that payment for any such order was made by the retailer either directly to this defendant or that payment was made to any finder designated by this defendant at the time the order was placed, and denies that in the latter case the finder then made payment to this defendant for such shipment after deducting from the sales price a "finder's commission". Further answering the averments of said paragraph, defendant states that its salesmen from time to time call on retail shoe service stores; that any so-called "missionary work" carried on by such salesmen consists of an attempt to induce such stores to place orders for this defendant's products with wholesalers designated by such stores and not by this defendant; that such orders are shipped and billed to such stores exclusively by the said wholesalers and not by this defendant, and remittances are made by such stores to said wholesalers and not to this defendant.

B. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 13(B).

14. This defendant denies the averments of paragraph 14 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge or information sufficient to form a belief as to the
373 truth thereof.

15. This defendant denies the averments of paragraph 15 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

16. This defendant denies the averments of paragraph 16 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

17. This defendant denies the averments of paragraph 17 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

18. This defendant denies that it granted to the defendant finders and department and chain stores illegal rebates and discounts as set forth in paragraph 18 of the Second Amended Complaint, and with respect to the remaining allegations of said paragraph defendant states that it is without knowledge or information sufficient to form a belief as to the truth thereof. Further answering said averments of paragraph 18, this defendant states that it follows the policy of selling its products to all finders and to all chain and department stores operating at least five units and
374 maintaining warehousing facilities at the same price and upon the same terms and conditions.

19. This defendant denies the allegations of paragraph 19 insofar as they relate to it and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

20. This defendant denies the allegations of paragraph 20 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof. Further answering the allegations of this paragraph, defendant states that its salesmen fr[illegible] time to time call upon independent shoe repair stores for the purpose of inducing such stores to place orders for this defendant's products with wholesalers designated by such stores and not by this defendant, that such orders are shipped and billed to such stores exclusively by said wholesalers and not by this defendant, and that remittances are made by such stores to said wholesalers and not to this defendant.

21. This defendant denies the allegations of paragraph 21 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge

or information sufficient to form a belief as to the truth thereof.

375 22. This defendant denies the allegations of paragraph 22 insofar as they relate to it and states that insofar as such averments relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof. Further answering paragraph 22 defendant denies that it was a party to, or participated in, any contract, combination or conspiracy as set forth in paragraph 22 of the Second Amended Complaint.

23. This defendant denies that it granted unreasonable, arbitrary and illegal rebates and discounts described in the Second Amended Complaint in violation of the Robinson-Patman Act, 15 U.S.C. Secs. 12-27; with respect to the remaining allegations of said paragraph defendant states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

24. This defendant denies the allegations of paragraph 24 insofar as they relate to it and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

25. This defendant denies the allegations of paragraph 25 insofar as they relate to it and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

26. This defendant denies the allegations of paragraph 26 insofar ts they relate to it and states that insofar
376 as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

27. This defendant denies the allegations of paragraph 27 insofar as they relate to it and states that insofar as they relate to other defendants it is without knowledge or information sufficient to form a belief as to the truth thereof.

28. This defendant denies that it has violated any anti-trust law in respect to any of the plaintiffs and denies that the violations of the anti-trust laws alleged in said complaint, insofar as they are attributed to this defendant, have continued, and denies that they have caused further and great injury to the plaintiffs; and defendant states that the remaining averments of paragraph 28 are not allegations of fact and do not require an answer.

Second Defense

29. The complaint fails to state a claim upon which relief can be granted.

Third Defense

30. This action was not commenced within two years next after the claims and causes of action alleged in Count I accrued.

WHEREFORE, having answered Count I of the Second Amended Complaint, this defendant prays that the
377 Court dismiss said Count and render its judgment for this defendant and award to it its costs.

AS TO COUNTS II TO IX, INCLUSIVE

31. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the first paragraph of each of said counts.

32. Answering the averments of the Second paragraph of each of said counts, defendant repeats and realleges, as if fully set forth herein, the answers, denials, statements, averments and defenses set forth in paragraphs 2 to 30, inclusive, of this answer, except that with respect to paragraph 12 of this answer this defendant states that the merchandise purchased by the plaintiffs named in Counts VII and VIII from this defendant was shipped by this defendant to these plaintiffs in Wisconsin and not in Illinois.

WHEREFORE, having answered each of said Counts II to IX, defendant prays that judgment be entered dismissing each of said counts and awarding this defendant its costs.

H. TEMPLETON BROWN
EDMUND A. STEPHAN
NEWTON N. MINOW
Attorneys for Defendant,
GRIFFIN MANUFACTURING CO.

MAYER, MEYER, AUSTRIAN & PLATT
231 S. LaSalle Street
Chicago 4, Illinois
STate 2-0600
Of Counsel

378-379 AFFIDAVIT OF SERVICE (Omitted in Printing)

380 **Exhibit "E" to Answer**

In the United States District Court
Northern District of Illinois
Eastern Division

No. 50 C 844

NORMAN P. SHAFFER AND BRUCE R. SHAFFER, CO-PARTNERS, D/B/A NORMAN P. SHAFFER & SON, ET AL., PLAINTIFFS

vs.

UNITED STATES RUBBER CO., A CORP., ET AL., DEFENDANTS

ANSWER OF DAN GRIPPO SUED HEREIN, DOING BUSINESS AS GRIPPO & COMPANY, TO SECOND AMENDED COMPLAINT—Filed March 31, 1953

Now comes Dan Grippo, sued herein, doing business as Grippo & Company, for answer unto all the counts of the second amended complaint, and herein says that;

FIRST DEFENSE—COUNT I

1. This defendant is without knowledge or information sufficient to form a belief concerning the allegation in Paragraph 1.

2. Avers that this defendant has not violated any of the laws set forth in Paragraph 2, and none of the plaintiffs named in the various Counts has or ever had any cause of action against this defendant.

3. This defendant is without knowledge or information to form a belief concerning the allegations in Paragraphs 3, 4 and 5.

4. In answer to Paragraph 6, avers that this defendant operates certain shoe repair shops in the Eastern part of the United States, but for approximately five (5) years prior to the filing of the original complaint herein, has not operated any shoe repair shop in the States of Illinois or Wisconsin, and none in the State of Indiana, except at the City of Evansville, and has not purchased any shoe repair supplies from any of the defendants herein for use or resale in the State of Illinois and Wisconsin, nor in the State of

Indiana, except at the City of Evansville, during said period of time.

5. This defendant is without knowledge or information to form a belief concerning the allegations in Paragraphs 7, 8 and 9.

6. This defendant is without knowledge or information to form a belief concerning the methods used by manufacturers of shoe leather, rubber goods and shoe polish as
381 alleged in Paragraph 10 and avers that he never purchased any of said products from any of the manufacturers thereof.

7. This defendant is without knowledge or information to form a belief concerning the allegations in Paragraphs 11 and 12.

8. This defendant is without knowledge or information to form a belief concerning the allegation in Paragraph 13 (a) and avers that for approximately five (5) years prior to the filing of the original complaint herein, no purchases were made from anyone of the other defendants for shoe repair supplies to be delivered for use or resale in the States of Illinois or Wisconsin, nor in the State of Indiana, except in the City of Evansville.

9. This defendant is without knowledge or information to form a belief concerning the allegations in Paragraph 13 (b).

10. In answer to Paragraph 14, this defendant denies that he contracted, combined or conspired with any of the defendants named herein, individually or collectively, or with any other person or corporation to monopolize the sale of shoe repair supplies in the city of Chicago or adjoining areas or any other place or to restrain trade or suppress competition in the sale of said shoe supplies in interstate trade or commerce in violation of any Act of Congress, either prior to or after January 1, 1945

11. In answer to Paragraph 15, this defendant denies he established or maintained a fixed, uniform or rigid system of pricing and distributing leather and shoe fiyding for any purpose whatever.

12. This defendant is without knowledge or information to form a belief concerning the allegations in Paragraphs 16, 17, 18, 19 and 20.

13. In answer to Paragraph 21, this defendant denies that he was ever a member or associated with the Shoe Service

Institute of America or its predecessor or had any dealings of any kind and has no knowledge or information to form any belief regarding its activities.

14. In answer to Paragraph 22, this defendant denies that at any time, he was a part of any alleged combination or conspiracy for restraining the sale of shoe leather or shoe findings for the purpose of injuring independent find-
382 ers including the plaintiff or any one else, or preventing them from competing in business in violation of any anti-trust law.

15. As regards Paragraph 23, this defendant denies that he induced or received any unreasonable or arbitrary or illegal discounts or rebates in violation of the Robinson-Patman Act.

16. This defendant is without knowledge or information to form a belief concerning the allegations in Paragraphs 24, 25, 26, 27 and 28.

Wherefore, this defendant denies that Plaintiff is entitled to any part of the relief prayed for in Paragraphs A, B and C.

Second Defense

This defendant has not purchased any shoe findings of any kind for use or resale in the competitive area served by the plaintiff for approximately five (5) years prior to the filing of the original complaint herein; that the alleged causes of action set forth in this second amended complaint against this defendant are barred by the provisions of the Statute of Limitations of the State of Illinois.

Third Defense

This defendant says that each and every count in the second amended complaint fails to state any claim upon which relief can be granted against him.

Additional Answer

As regards Paragraphs 29 to 32, Counts II and III, that each of the complaintants named herein have been dismissed as plaintiffs and hence no answer thereto is required from this defendant.

As regards Paragraphs 33 to 44, Counts IV to IX. For answer thereto, this defendant adopts the allegations set

forth in Paragraphs 1 to 28 and A, B and C of Count I to each of Counts IV to IX as if set forth in haec verba herein.

WHEREFORE, this defendant prays judgment that
383-384 said second Amended Complaint and each count thereof be dismissed with costs to him.

DAN GRIPPO,
Defendant d/b/a GRIPPO & COMPANY

Duly sworn to by Dan Grippo, jurat omitted in printing.

Received copy of this answer this 31st day of March 1953.

FRANCIS HEISLER,
Attorney for Plaintiff

385 **Exhibit "F" to Answer**

In the United States District Court
for the Northern District of Illinois
Eastern Division

No. 50 C 844

NORMAN P. SHAFFER, ET AL, PLAINTIFFS,

vs.

UNITED STATES RUBBER CO., ET AL, DEFENDANTS

ANSWERS OF HOWES LEATHER COMPANY, INC., TO THE INTERROGATORIES WHICH WERE PROPOUNDED TO IT UNDER RULE 33—Filed December 31, 1954

1. *A.* July 15, 1947; Delaware.

B. Incorporators and original shareholders; John Gerdes, Dudley L. Miller, Winthrop A. Short.

C. $1,000.

D. $1,000.

E. President, Dudley L. Miller, 24 East 67th St., New York, N. Y.; Secretary, Winthrop A. Short, Oyster Bay, Long Island, N. Y.; Treasurer, John Gerdes, 4 East 72nd Street, New York, N. Y.; Assistant Secretary and Assistant Treasurer, Jean B. Kraus, 23 North Crescent, Maplewood, N. J.

F. & G. Paul H. Hudson succeeded Dudley L. Miller as President October 15, 1947, and John Schanzle succeeded Hudson September 25, 1952. Dudley L. Miller succeeded Short as Secretary October 15, 1947, and Short was elected Assistant Secretary and Treasurer to succeed Kraus October 13, 1947.

On August 12, 1947 the following Vice Presidents were elected: Ernest G. Howes, Henry S. Howes, Samuel C. Howes, John Schanzle, Everett W. Pervere and Leo F. Ready. Ernest G. Howes died in office October 6, 1951; Samuel C. Howes died in office March 5, 1952; and Henry S. Howes died in office January 31, 1954.

386 On September 23, 1954, the following Vice Presidents were elected: Fred E. Artz, John C. Callahan, James J. Caulfield, George A. Hegner, Henry F. Keating, Donald A. McKinley and Harry M. Widney.

H. The original directors were as follows:

Class A—W. Randolph Montgomery, New Canaan, Conn.; Dudley L. Miller; Winthrop A. Short; Dorothy Clayton, 168 North 17th Street, East Orange, N. J.; Anne R. Gallo, 324 5th Street, Jersey City, N. J.; Christine G. LaVerne, 363 Washington Avenue, Belleville, N. J.; *Class B*—George O. Arkin, 290 Riverside Drive, New York, N. Y.; Marian Knapp, 612 West 112th Street, New York, N. Y.; Charlotte B. Cohen, 106-36 Sutphin Blvd., Jamaica, N. Y.; Elinor A. Remer, 629 West 115th Street, New York, N. Y.; Bette M. Ashe, 39-35 46th Street, Sunnyside, Long Island, N. Y.; Victoria Mazurek, 235 East 25th Street, New York, N. Y.; *Class C*—John Gerdes; Mary Hamilton Jones, c/o Gerdes & Montgomery, 1 Wall Street, New York 5, N. Y.; Lulu Tilton, 62-63 99th Street, Forest Hills, N. Y.

Changes in the above. On July 15, 1947, Jean B. Kraus was elected Class A director to succeed Christine G. Laverne and William C. Porth, 56 Pearsall Avenue, Lynbrook, N. Y., was elected a Class B director to succeed George O. Arkin.

On August 12, new Class B directors were elected as follows:

Ernest G. Howes
Henry S. Howes
Samuel C. Howes
Everett W. Pervere
John Schanzle

(all of 321 Summer Street, Boston, Mass.)

Leo F. Ready, 4649 Shaw Ave., St. Louis, Mo.

387 On the same date Arthur E. Whittemore, 75 Federal Street, Boston, Mass., succeeded Jones as a Class C director, and Joseph Peter Spang, 15 West First Street, South Boston, Mass., was elected a Class C director to succeed Tilton. Also on that date Mary Hvisdak, 312 East 85th St., New York, N. Y., was elected a Class A director to succeed Clayton.

On October 15 the Class A directors became Bayard F. Pope, 15 East 69th Street, New York, N. Y.; Paul H. Hudson, 142 Haddon Place, Upper Montclair, N. J.; Joseph A. Broderick, 175 East 79th Street, New York, N. Y.; Richard W. Lawrence, c/o Bankers Commercial Corp., 270 Madison Avenue, New York, N. Y.; Warner Kent, 64 Morris Lane, Scarsdale, N. Y.; and Dudley L. Miller.

On September 28, 1950, Jerome Preston, 24 Federal Street, Boston, Mass., succeeded Spang as Class C director.

On December 20, 1951, Winthrop A. Short succeeded Joseph A. Broderick as Class A director.

On September 25, 1952, Paul H. Hudson resigned.

Mr. Lawrence died in 1948. The last meeting attended by him was September 23, 1948.

On March 25, 1954, Earl Johnson of 75 Federal Street, Boston, Mass., was elected to fill the vacancy created by the death of Henry S. Howes, which occurred on January 31, 1954.

3. *A.* (1) The items manufactured by the defendant from July 15, 1947 to November 11, 1954 used in the repair-

ing or reconditioning of shoes and their trade names (all of which were manufactured in defendant's plants at Boyne City, Michigan, Boston, Massachu-
388 setts, Columbus, Indiana, Mount Jewett, Pennsylvania and West Hickory, Pennsylvania) and are as follows:

Trade Name*	Items Taps	Strips	Bends	Soles	Offal
Boyne City Dry Foot	—	—	—	—	
Boyne City Flexible	—	—	—	—	
Mooney Flexible	—	—	—	—	
Mooney French Finish	—	—	—	—	
Howes Oak	—	—	—	—	
Howes Oak Flexible	—	—	—	—	
Rock-Oak	—	—	—	—	
Amo-Flex	—	—	—		
All-American	—	—	—		

* Some items sold are not trade marked.

389 *3. A.* (2) The pounds of each item manufactured for such use during such period of time were:

Taps	23,082,953 Lbs.
Strips	2,701,342 "
Offal	7,565,190 "
Bends	885,855 "
Soles	1,072,101 "
	35,307,441 "

B. The percentage of the total production of each item for each of the defendants during the period July 15, 1947 to November 11, 1954 is as follows:

	Taps	Strips	Bends	Soles	Offal
A. Leveton Company	39%	17%		02%	02%
K. Kaplan Son & Co.	88	1 17	16%	66	21
Public Shoe Service Corporation (including Hub Leather and Findings Corporation)	2 00	28		2 96	1 02

The percentage of the total production of each item for the plaintiffs in Cook County, Illinois during the period July 15, 1947 to November 11, 1954 is as follows:

	Taps	Strips	Bends	Soles	Offal
Norman P. Shaffer & Son	04%	10%		04%	

390 8 *A.* Henry F. Keating and Vincent O'Brien of 321 Summer Street, Boston, Mass., George Lichten of 10 West Elm Street, Chicago, Illinois, and William J. Patterson, 140 Hildreth Place, North Yonkers, New York, are all the personnel employed since the formation of the corporation whose duties have included the sale or distribution of items manufactured by Howes Leather Company, Inc., to the finders' trade in the city of Chicago.

B. All are still employed except Mr. Lichten.

10. & 11. This defendant was not at any time a party to any such agreement. Prices at which items were sold in all cases were set out in routine orders, invoices, etc.

12. Henry F. Keating, head of Finders Department.

13. No, except there is a customary price differential where the sale is to a jobber.

14. Different class of customer performing different functions.

17. No. There is the usual trade discount available to all customers.

18. We have no such records.

391 *19. A.* The prices charged by this defendant to other defendants for items of findings during the period July 15, 1947 to November 11, 1954 were as follows:

Taps

K. Kaplan Son & Co.

Mooney Right and Left Flexible Taps

Date	Grade		Price Per Dozen Pairs
Nov. 4, 1947	Prime 5½	Regular	$5.70
28	Prime 6	"	6.70
Dec. 9	SB 6	"	7.30
12	SB 6	"	7.30
22	SB 6	"	7.30
Dec. 6, 1948	Prime 5	"	6.75
6	Prime 6	"	7.90
6	Prime 5½	"	7.40
6	Fine 5½	"	6.75
6	Fine 6	"	7.25
15	Prime 5½	"	7.40
15	Prime 6½	"	8.00
21	Prime 5½	"	7.40
21	Prime 6½	"	8.00
23	Prime 6½	"	8.00
Feb. 2, 1949	SB 6	"	6.00
14	SB 6	"	6.00
May 20	Fine 6	"	6.25
20	Fine 5½	"	5.75
Nov. 4	Prime 6	"	7.00
4	Fine 5½	"	5.75
392			
Nov. 4, 1949	SB 6½	Regular	$5.25
Jan. 9, 1950	Prime 6	Large	8.50
9	Prime 5½	"	7.50
9	Prime 5	"	6.75
9	Prime 6½	"	8.50
9	Prime 7	"	8.50
13	Prime 5½	Regular	6.50
Feb. 15	Prime 5½	"	6.50
May 9	SB 6	"	4.75
9	SB 5½	"	4.50
June 28	Prime 5½	"	6.25
28	Prime 6	"	6.50
28	Prime 5½	Large	7.50
28	Prime 6	"	7.50
28	Fine 6	"	6.50
28	Fine 6	Regular	5.50
28	Fine 5½	"	5.25
28	SB 6	Large	6.00
29	Prime 6	"	7.50
29	Fine 5½	Regular	5.25
29	SB 6	Large	6.00
July 14	Prime 5½	Regular	6.25
20	SB 5½	Large	5.50
24	Prime 6	Regular	7.00
24	Prime 6½	"	7.00
24	Prime 5½	"	7.00
24	Fine 5½	"	5.75
393			
July 27, 1950	Prime 5½	Regular	$7.00
31	Prime 4½	"	4.50
31	SB 6½	"	5.75
Aug. 2	Fine 4½	"	3.75
2	SB 5½	Large	5.50
7	Prime 6	"	8.25
7	Prime 6½	"	8.50

Mooney Right and Left Flexible Taps

Date		Grade		Price Per Dozen Pairs
	7	B 5½	Regular	3.75
	7	B 6½	"	4.75
	7	B 6	"	4.75
	10	Fine 6	Large	7.50
	14	SB 6½	Regular	5.75
	29	SB 5½	Large	5.50
	29	SB 6½	Regular	5.75
Sept.	27	Prime 5½	Large	7.50
Feb.	2, 1951	Prime 5½	Regular	8.80
	2	Fine 6	"	8.50
	2	SB 6	"	7.75
	2	SB 5½	"	7.15
	2	X 5	Large	8.58
	2	X 5½	"	9.96
	2	X 6	"	10.20
	9	Prime 5½	Regular	8.80
	9	SB 6	"	7.75
	9	SB 5½	"	7.15

394

Feb.	20, 1952	Prime 5	"	5.50
	20	Fine 5½	Large	6.50
Feb.	20, 1952	Fine 5	Regular	4.75
	20	SB 5	"	3.75
Apr.	16	Prime 5	Large	6.25
	18	Prime 5	Regular	5.25
May	5	Prime 5½	Large	6.75
	5	Prime 5	"	6.25
	19	SB 5½	"	5.00
	27	SB 5½	"	5.00
Aug.	25	SB 5½	Regular	4.00
Nov.	10	Prime 5½	"	6.00
	13	Prime 5½	"	6.00
	13	Prime 6	Large	7.50
Dec.	1	Prime 5½	Regular	6.00
	4	Prime 5½	"	6.00
	4	Prime 5½	"	6.25
	4	Prime 5½	Large	7.25
Apr.	17, 1953	X 5	Regular	4.50
	17	X 6½	"	5.50
	17	X 7	"	5.50
May	21	Prime 5	"	6.00
	21	Prime 6	Large	7.75
Sept.	11	SB Prime 5½	"	5.50
Oct.	19	SB Prime 6	"	5.50
Apr.	6, 1954	SB Prime 5½	Regular	4.25

395

Boyne City Dry Foot Angle Taps

Sept.	6, 1947	Prime 6½	Regular	$6.50
	6	B 6	"	5.00
	6	Prime 6	"	6.25
	6	B 5½	"	4.50
	6	Fine 5	"	5.25
	6	#1 6	"	5.50
	6	Fine 5½	"	5.75
	6	#1 5½	"	5.00
	6	Special 5½	"	4.00
	6	#1 5	"	4.25
Oct.	1	Prime 5½	"	6.00
	1	Prime 5	"	5.50

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
1	Prime 6½	"	6.75
1	Prime 6	"	6.50
1	Prime 5	"	5.00
1	Prime 6	"	6.25
1	Fine 6	"	6.50
8	Prime 5½	"	6.00
8	Prime 6	"	7.00
15	Prime 6½	"	6.75
Dec. 1	Prime 5½	"	6.00
1	Fine 6	"	6.00
1	Fine 5½	"	7.25
1	SB 5½	"	6.00
1	SB 6	"	7.00
4	Prime 6	Large	7.25
4	Prime 5½	"	6.15

396

Dec. 9, 1947	Prime 5½	Regular	7.85
9	Prime 6	"	8.50
9	Fine 6	"	8.00
9	SB 6	"	7.00
9	SB 5½	"	6.00
17	SB 6	"	7.00
Jan. 8, 1948	SB 6½	"	7.00
8	SB 6	"	7.00
8	SB 5½	"	6.00
Feb. 27	SB 5	"	4.50
27	SB 5½	"	5.50
Mar. 2	SB 6½	"	7.00
2	SB 4½	"	3.25
Apr. 13	SB 4	"	2.75
21	Prime 5½	"	6.80
21	SB 5	"	4.20
May 18	SB 5	"	4.20
June 18	Prime 5½	"	6.80
July 14	Prime 5½	"	6.80
Aug. 10	Prime 5½	Large	8.40
10	SB 5½	Regular	5.80
10	SB 5	"	4.70
10	SB 4½	"	3.25
10	SB 7	Large	7.60
10	SB 6	"	7.35
10	SB 5½	"	6.90

397

Aug. 12, 1948	SB 6	Large	7.35
21	Prime 5½	Regular	7.20
21	Prime 6	"	7.75
21	Prime 6½	"	8.00
21	SB 6½	"	6.50
21	SB 6	"	6.25
Sept. 1	Prime 5½	"	7.20
1	SB 4½	"	3.15
1	SB 4	"	2.75
14	Prime 5½	"	7.20
15	SB 6½	"	6.50
15	SB 6	"	6.25
24	Prime 6½	"	8.00
24	Prime 6	"	7.75
24	Prime 5½	"	7.20
24	SB 5½	Large	6.50
Oct. 6	SB 6½	"	7.60

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
21	SB 7	"	$7.60
22	Prime 6½	Regular	8.00
22	Prime 6	"	7.75
22	Prime 5½	"	7.20
22	SB 6½	"	6.50
28	SB 5½	Large	6.90
Nov. 5	SB 5½	Regular	7.20
6	Prime 5½	"	7.20
Jan. 14, 1949	Special 5	"	3.10

398

Jan. 14, 1949	SB 5	Regular	4.00
Feb. 4	Prime 6	"	7.50
4	SB 6	"	6.00
4	Special 5½	"	4.25
4	SB 6	Large	6.80
4	Special 6	Regular	4.60
10	Prime 6	Large	9.25
Apr. 20	Prime 6	Regular	7.00
20	Prime 5½	"	6.50
20	Prime 5	"	6.00
20	Fine 5½	Large	7.00
20	SB 5½	Regular	4.60
20	SB 5	"	3.50
21	SB 5	"	3.50
22	SB 5	"	3.50
May 25	Prime 5½	"	6.50
Aug. 2	Fine 5½	Large	6.50
3	Prime 6½	Regular	7.00
3	Prime 6	"	6.90
3	Fine 6	"	6.00
3	SB 6	"	5.20
3	SB 5½	"	4.25
3	SB 6	Large	6.15
5	Prime 5½	Regular	6.40
10	Prime 5½	"	6.40
19	B 5½	"	3.50
26	SB 5½	"	5.80

399

Sept. 9, 1949	Prime 5½	Large	7.50
Nov. 4	B 5½	"	4.70
11	Prime 6½	Regular	7.25
11	Prime 6	"	7.25
11	SB 6½	"	5.25
11	SB 6	"	5.25
11	SB 5½	"	4.50
11	B 5½	"	3.75
Dec. 1	SB 6½	"	5.25
Jan. 6, 1950	Prime 5	"	5.75
27	Prime 5½	Large	7.50
27	Fine 5½	Regular	5.50
27	Fine 5½	Large	6.50
Feb. 15	Prime 5	Regular	5.75
Apr. 7	SB 5½	"	4.25
May 1	Prime 6	Large	7.75
1	Prime 5½	"	7.25
1	Prime 7	"	7.75
1	SB 6	Regular	4.75
1	SB 6	Large	5.50

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
1	SB 5½	"	$5.15
1	SB Prime 5½	Regular	5.00
11	Prime 6	"	6.50
June 30	Prime 6½	"	6.75
30	Prime 6	"	6.50
30	Prime 5½	"	6.25
30	Prime 6	Large	7.50
400			
June 30, 1950	Prime 6	Large	7.50
30	Fine 6	Regular	5.50
30	Fine 5½	"	5.25
30	Fine 6	Large	6.50
30	Fine 5	"	5.40
30	SB 6½	Regular	4.50
30	SB 6	"	4.50
30	SB 5½	"	4.00
30	B 6	Large	4.50
30	B 5½	"	3.90
30	A Fine 6	Regular	3.75
30	A Fine 5½	"	3.25
July 6	Prime 6	"	6.50
7	Prime 5½	"	6.25
12	SB 5½	"	4.00
17	Fine 6	"	5.50
18	SB 5	"	3.10
19	Prime 5½	Large	7.25
25	SB 5½	Regular	4.00
26	Prime 6½	"	7.00
26	SB 5	"	3.25
26	B 6	"	4.00
26	B 5½	"	3.50
26	A Fine 6	"	4.00
26	A Fine 5½	"	3.50
27	SB 6	Large	4.25
Aug. 1	SB Prime 5	Regular	4.50
401			
Aug. 2, 1950	A Fine 5	Regular	3.25
2	SB 4	"	2.75
2	SB 5	Large	4.25
7	Fine 6	"	7.20
9	X 7	Regular	6.75
9	X 6½	"	6.75
9	X 5½	"	6.25
9	X 5	"	5.50
9	X 6	Large	7.75
9	X 5½	"	7.50
9	X 5	"	6.50
11	Prime 5½	"	6.25
11	Prime 5½	"	7.25
11	Fine 5½	"	6.00
14	A Fine 4½	Regular	2.50
17	SB 5½	"	4.00
Sept. 6	SB 5½	"	4.00
18	X 5½	Large	7.50
18	X 5	"	6.50
26	Prime 5½	Regular	6.25
Oct. 17	Prime 5½	"	6.25
17	Fine 6	"	5.50
20	Prime 5½	"	6.25
Nov. 10	Fine 5½	Large	6.00

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
Nov. 10, 1950	X 5	Large	$6.50
11	SB 5	"	4.25
Dec. 1	Fine 5½	"	6.00
402			
22	X 5	"	6.50
Jan. 2, 1951	Prime 6	Regular	8.00
2	Prime 5½	"	7.75
2	Prime 7	"	8.25
2	Fine 6	"	7.25
2	Fine 5½	"	7.00
2	Fine 5	"	6.00
2	SB 6	"	6.50
2	SB 5½	"	5.75
4	X 5	Large	6.50
Feb. 5	Prime 6	Regular	8.90
5	Prime 5½	"	8.65
5	Fine 6	"	8.35
5	Fine 5½	"	8.15
5	Fine 5	"	7.00
5	SB 6	Large	9.12
5	B 5½	Regular	6.00
5	A Fine 5½	"	6.00
5	X 6	Large	10.02
5	X 5½	"	9.78
5	X 6½	"	10.20
12	X 5½	"	9.78
12	X 6½	"	10.20
May 8	SB 5½	"	8.40
July 31	Fine 5	Regular	6.50
31	SB 5½	"	6.50
31	SB 5	"	5.50
403			
Sept. 7, 1951	SB 5	Large	4.25
21	SB Prime 5½	Regular	6.25
21	SB Prime 7	"	6.50
24	SB Prime 6	"	6.50
24	SB Prime 6½	"	6.50
Oct. 9	SB Prime 6½	"	6.50
Nov. 2	SB Prime 7½	"	6.50
6	SB 5	Large	4.25
30	Prime 7	"	7.50
30	Fine 7	"	7.00
30	Fine 5½	"	7.00
Feb. 2, 1952	SB 6	"	6.25
5	SB 5½	"	6.00
20	Prime 6	"	7.50
Apr. 21	Prime 6	"	6.75
21	Prime 5½	"	6.75
21	Prime 5	"	6.25
21	Prime 7	"	7.00
21	Prime 6½	"	6.75
21	SB 5	Regular	3.75
24	Prime 7	"	5.75
May 20	Prime 5½	Large	6.75
20	SB 5½	Regular	4.00
20	SB 5½	Large	5.00
22	Prime 6½	Regular	5.75
29	Prime 5½	Large	6.75
29	SB 5½	Regular	4.00
29	SB 5½	Large	5.00

404

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
May 29, 1952	B 5½	Regular	$3.75
June 3	Prime 6	Large	7.00
Nov. 13	Fine 5½	"	6.00
Dec. 1	Prime 6	"	7.00
Jan. 27, 1953	SB 5½	"	4.85
Apr. 1	SB 5½	"	4.75
7	Prime 6	Regular	6.50
7	Prime 6½	"	6.50
22	X 5	"	4.50
May 27	Prime 6½	"	6.50
June 8	X 5½	Large	5.75
Sept. 16	SB 5½	Regular	3.75
16	SB 6	Large	5.00
25	Prime 6	Regular	6.50
Oct. 19	SB 6	"	4.00
Apr. 7, 1954	SB 5½	"	3.75
7	SB 5½	Large	4.75
July 26	A Fine 5½	Regular	2.50
26	A Fine 6	"	2.75
26	A Fine 5½	Large	3.25
26	A Fine 6	"	3.50
26	SB 6	"	4.90
26	Prime 6	"	7.10
Aug. 6	SB 5½	"	4.60
30	Prime 6½	"	7.25

405

Boyne City Flexible Taps

Nov. 30, 1951	Prime 5½	Regular	6.50
Feb. 1, 1952	Prime 5½	Large	7.50
May 19	Prime 5½	Regular	5.75
19	Prime 5½	Large	6.75
Nov. 13	Prime 5½	"	7.25
13	Prime 5½	Regular	6.25
Dec. 4	Prime 6½	Large	7.00
Jan. 23, 1953	Prime 5½	"	7.25
May 21	Prime 5½	"	7.50
June 12	Prime 5½	"	7.50

Boyne City Dry Foot Branded and Reject Angle Taps

Nov. 6, 1953		Regular	1.50
6		Large	1.85

Boyne City Sanded Taps

Jan. 10, 1950	SB 4	Regular	2.50
Aug. 16	SB 4	"	2.75
22	SB 4	"	2.75
25	SB 4	"	2.75
Sept. 5	SB 4	"	2.75
14	SB 4	"	2.75
Nov. 2	SB 4	"	3.00

406

Reject Angle Taps

Date	Grade	Price Per Lb.
July 22, 1949		$.20
July 7, 1950		.20
Aug. 9		.25
Nov. 14, 1952		.24

Men's Soles 8–12

Date	Grade	Price Per Pair
Sept. 9, 1948	Prime 10–11	$.85
Jan. 21, 1949	#1 10–11	.73
Apr. 12	#1 10–11	.69
12	Prime 11–12	.88
14	Prime 11–12	.88
14	#1 10–11	.69
21	#1 10–11	.69
July 19	Fine 10–11	.75
Aug. 10	Prime 10–11	.80
Sept. 1	Prime 10–11	.80
Feb. 28, 1950	Prime 10–11	.80

407

Howes Oak Angle Taps

Date	Grade		Price Per Dozen Pairs
Dec. 1, 1949	Prime 6	Regular	$6.00
Jan. 10, 1950	" 6	"	6.00
10	" 5	"	5.50
13	" 5½	"	5.50
13	" 6	"	6.00
July 21	" 5½	"	5.50
Aug. 18	" 5½	"	5.50
Sept. 18	" 5½	"	5.50

Amoflex Taps

May 23, 1951	Fine 4	Regular	4.30
Aug. 21, 1952	Prime 6	"	5.00
Sept. 11	" 6	"	5.00
Sept. 23	" 5½	"	4.75
23	" 6	"	5.00
Oct. 29	" 5½	"	4.75
29	" 6	"	5.00
Nov. 3	" 6	"	5.00
3	" 5½	"	4.75
10	" 6	"	5.00
10	" 5½	"	4.75
Jan. 23, 1953	" 6	Large	6.25
23	" 5½	"	6.00
Feb. 2	" 6	"	6.50
2	" 5½	"	6.25
27	" 6	Regular	5.25
27	" 5½	Large	6.00

408

Mar. 26	" 6	Regular	$5.25
Apr. 7	" 6	"	5.25
14	" 5½	Large	6.00
14	" 5½	Regular	5.00
14	" 6	Large	6.25
14	" 6	Regular	5.25
14	" 5	"	4.75
17	" 5½	Large	6.00
27	" 6½	"	6.25
May 27	" 5½	Regular	5.25
June 12	" 5	"	4.50
12	" 5½	"	5.25
12	" 6	"	5.50
Aug. 11	" 5½	"	5.00
24	" 5½	Large	6.25

Amoflex Taps

Date	Grade		Price Per Dozen Pairs
Oct. 26, 1953	Prime 5½	Large	$6.50
30	" 6½	"	6.75
Feb. 9, 1954	" 5½	"	6.25
9	" 6	"	6.50
9	" 6½	"	6.50
Mar. 17	" 5½	Regular	5.00
17	" 5½	Large	6.00
17	" 6	"	6.25
17	" 6½	"	6.25
Apr. 6	" 5½	Regular	5.00
6	" 6½	Large	6.25
Aug. 12	" 6	"	6.00
409			
Sept. 30	" 5½	"	6.00
30	" 6½	"	6.50
Oct. 13	" 5½	Regular	5.00
13	" 5½	Large	6.00
13	" 6	Regular	5.00

Amoflex Sanded Taps

May 23, 1951	Fine 4	Regular	4.30

Women's Mooney Flexible Taps

Mar. 1, 1948	Prime 4	Regular	4.25
1	" 4½	"	4.25
1	" 5	"	4.25
Apr. 6	" 4½	"	3.75
6	" 5	"	3.75
May 10	" 4	"	4.00
10	" 4½	"	3.90
10	" 5	"	3.90
14	" 4	"	4.00
20	" 4	"	4.00
20	" 5	"	3.90

#1 Regular

Aug. 1, 1950	3½	3.00

410

Heavy Finders Strips

Date	Grade	Price Per Lb.
Nov. 19, 1947	Fine 13	$.90
19	Prime 13	.95
Aug. 10, 1948	SB 13	.95
Sept. 1	SB 13	.95
Oct. 6	SB 13	.95
Jan. 14, 1949	Prime 13	1.05
14	Toplift 3½–4½	.60
20	Prime 13	1.05
Feb. 1	Fine 13	.95
4	Fine 13	.95
June 29	Prime 13	.90
July 28	Prime 13	.90
July 31, 1951	Toplift 3½–4½	.72
Sept. 13	Toplift 3½–4½	.72

Heavy Finders Strips

Date	Grade	Price Per Lb.
Feb. 22, 1952	Toplift 3½–4½	$ .58
May 29	Toplift 3½–4½	.55

Howes Oak Strips

Jan. 31, 1950	Prime 13	.80
31	Prime 13 Extra Heavy	.80
Feb. 3	Prime 13	.80
3	Prime 13 Extra Heavy	.80
7	Prime 13	.80
7	Prime 13 Extra Heavy	.80

Amoflex Strips

June 6, 1952	Prime 13	.80
13	Prime 13	.80
Feb. 5, 1953	Prime 10/12	.80
5	Fine 10/12	.75
Oct. 13, 1954	Prime Heavy	.80

411

Mooney Flexible Strips

Aug. 9, 1949	Prime 13	.95
Jan. 10, 1950	Prime 13	.95
Apr. 24	Prime 13	.90
Dec. 21	Prime 13	1.15
Apr. 18, 1951	Prime 13	1.15
July 31	Prime 13 10 iron up	1.22
Nov. 30	Prime 13	.95
Feb. 20, 1952	Fine 13	.75
Apr. 18	Fine 13	.72
May 22	Prime 13	.90
Dec. 9	Prime 13 10 iron up	.90
Sept. 16, 1953	Prime 13 10/12	.90
Mar. 5, 1954	Prime 13 10/12	.85

Finders Bends

Dec. 12, 1947	Prime Extra Heavy	.90
Apr. 21, 1948	Prime Heavy	.80
Sept. 20	Prime Extra Heavy	.85
Aug. 16, 1949	Prime Heavy	.72

Reject Angle Taps

Sept. 1, 1948	.38
14	.38
Oct. 13	.36
14	.36
Dec. 10	.36
Jan. 14, 1949	.30

412

Mooney Heavy Strips

July 24, 1950	SB Prime 13	.80

Boyne City Dry Foot Finders Strips

Aug. 2, 1949	Fine 13		.80
10	Prime 13		.90
Nov. 11	Prime 13	12 iron up	.90
11	Prime 13	10–12 iron	.90
May 1, 1950	Prime 13	10–12 iron	.85
Aug. 14	Fine 13		.90
Sept. 11	Fine 13		.90
Apr. 18, 1951	Fine 13	10–12 iron	1.15

Boyne City Dry Foot Finders Strips

Date	Grade		Price Per Lb.
Aug. 7, 1951	Fine 13	10–12	$1.10
20	Fine 13	12 up	1.10
24	Prime 13	12 up	1.20
Nov. 30	Fine 13	10–12	.85
30	Prime 13	10–12	.90
Feb. 5, 1952	Prime 13	12 up	.80
22	Prime 13	12 up	.80
22	Fine 13	12 up	.75
Apr. 16	Fine 13	10–12	.72
May 29	Prime 13	10–12	.85
Sept. 25	Fine 13	10–12	.75
Nov. 3	Prime 13	10–12	.85

413

Boyne City Dry Foot Strips

Apr. 1, 1953	Prime 10–12	.90
May 27	Prime 10–12	.90
Apr. 7, 1954	Prime Heavy	.85
7	Fine Heavy	.75
July 26	Prime Heavy	.85
26	Prime Heavy	.75

Rock Oak Strips

July 26, 1954	Prime Heavy	.75

Boyne City Flexible Irregular Strips

June 12, 1953	.60

Top Lift Strips 3½"–4½"

July 26, 1954	.50

Boyne City Dry Foot Choice Taps

June 10, 1953	Regular	.55
10	Large	.55

Mooney Mfrs Full Soles

Jan. 27, 1954	Prime 10–11	Large	.80
Feb. 24	Prime 10–11	"	.80

414

Rock Oak Angle Taps

Date	Grade		Price Per Dozen Pairs
July 31, 1951	Prime 5½	Regular	$7.25
Aug. 14	" 6	"	7.25
14	" 5½	"	7.00
14	Fine 5½	"	6.50
14	Prime 6	Large	8.85
14	" 5½	"	8.50
Sept. 27	" 5½	"	8.25
Nov. 2	" 5½	"	8.25
Feb. 5, 1952	" 6½	"	6.50
22	" 6	Regular	5.50
Apr. 14	" 7	Large	6.50
16	" 5½	"	5.75
16	" 6	"	6.00
21	" 6½	"	6.00
21	" 5	"	5.25
May 5	" 6	Regular	5.00

Rock Oak Angle Taps

Date	Grade			Price Per Dozen Pairs
May 20 1953	Prime	5½	Large	$5.75
29	"	5½	"	5.75
29	"	6	Regular	5.00
29	"	5½	"	4.75
29	"	6	Large	6.00
Aug. 21	"	6	"	6.00
Oct. 7	"	6½	"	6.00
9	"	5½	"	5.75
28	"	5½	"	5.75
Feb. 5, 1953	"	6	Regular	5.25
5	"	6	Large	6.25
12	"	5½	Regular	4.75
415				
Apr. 22	"	5½	Large	5.75
Sept. 25	"	6	Regular	5.50
Oct. 2	"	5	Large	5.50
Mar. 19, 1954	"	5½	Regular	4.85
May 28	"	6	"	5.00
28	"	5½	Large	5.85
28	"	6	"	6.00
June 25	"	5½	Regular	4.85
Aug. 30	"	6½	Large	6.00
30	"	5½	"	6.00
30	"	6	"	6.50
30	"	6½	"	6.50
416				

A. Leveton Company

Mooney Right and Left Flexible Taps

Apr. 12, 1949	Prime	5½	Regular	6.60
12	Prime	6	"	7.25
18	Prime	5½	"	6.60
18	Prime	6	"	7.25
June 8	Prime	5½	"	6.60
8	Prime	6	"	7.25
13	Prime	5½	"	6.60
13	Prime	6	"	7.25
Oct. 25	Prime	5½	Large	8.00
25	Fine	5½	"	7.00
25	SB	5½	"	6.00
Apr. 28, 1950	Prime	5½	Regular	6.50
July 20	Prime	6	"	7.00
20	Prime	6½	"	7.25
20	Fine	5½	"	5.75
20	Fine	6½	"	6.25
June 13, 1951	Prime	6	"	8.50
13	Fine	5½	"	8.00
13	Fine	6	"	8.00
13	Fine	5	"	7.00
Nov. 9	Fine	5½	"	7.00
9	SB	4	"	4.25
Dec. 20	Prime	5½	"	6.25
20	Prime	6	"	6.50
Aug. 20, 1952	Fine	6	"	5.25
20	Fine	6	Large	6.25

417

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Apr. 9, 1948	SB	5½	Regular	$5.00
21	Fine	6	"	6.80
27	SB	5	"	3.50
27	SB	5½	"	4.50
May 17	SB	5½	"	5.00
July 14	SB	5½	"	5.00
14	SB	5	"	4.00
Aug. 21	Prime	5½	Large	8.50
21	Prime	6½	"	9.75
21	Fine	5½	"	8.00
21	SB	5	Regular	4.80
21	SB	4½	"	3.25
Sept. 15	SB	4½	"	3.15
Oct. 6	Fine	5½	"	6.50
6	Fine	6	"	7.20
22	Prime	5½	"	6.80
22	Prime	6	"	7.50
Nov. 6	Prime	5½	"	6.80
10	Prime	5½	"	6.80
16	Prime	5½	"	7.25
Jan. 13, 1949	B	5	"	3.50
13	B	5½	"	4.00
13	Special	4½	"	2.25
13	SB	5	"	4.00
Feb. 16	Prime	6	"	7.50
16	Fine	6	"	7.00
16	SB	6	"	6.00
418 16	Special	5½	"	4.10
16	Special	4½	"	2.10
22	Special	4	Large	2.60
Apr. 13	SB	5½	Regular	4.75
13	SB	5	"	3.50
13	SB	5½	"	4.50
May 4	SB	5	"	3.50
4	SB	5½	"	4.50
6	Fine	5½	"	6.00
9	A Fine	5	"	2.50
18	A Fine	5	"	2.50
July 13	A Fine	5	"	2.50
25	SB	5	"	3.50
25	SB	5½	"	4.50
29	A Fine	4½	"	1.75
29	A Fine	5	"	2.50
29	A Fine	5½	"	3.50
July 7	A Fine	5	"	2.50
Aug. 23	Fine	7	Large	7.40
23	Fine	7½	"	7.40
26	Prime	5½	Regular	6.40
26	Fine	5½	"	5.75
26	Prime	6	"	7.00
26	Fine	6½	Large	7.40
Sept. 14	SB	5½	Regular	4.25
14	Prime	6	Large	8.00
21	SB	5½	Regular	4.25

419

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Sept. 26, 1949	SB	5½	Regular	$4.25
30	SB	5½	"	4.25
Nov. 14	SB	6	"	5.00
14	Fine	6	"	6.00
29	SB Prime	5½	"	5.75
Feb. 13, 1950	Prime	5½	"	6.50
28	Prime	5½	"	6.50
Apr. 6	SB	5½	"	4.25
10	SB	5½	"	4.25
May 31	Prime	6	"	6.50
31	Prime	5½	Large	7.40
31	Prime	6	"	7.60
June 20	Fine	6	"	7.20
July 14	Prime	6½	Regular	6.75
14	Prime	6	Large	7.60
14	Fine	5½	Regular	5.25
14	SB	5	"	3.00
14	B	5½	"	3.25
20	Prime	6	Large	8.00
20	Prime	6½	"	8.00
Aug. 2	Prime	6	Regular	6.75
2	SB	5½	"	4.25
2	Prime	5½	Large	7.40
4	Prime	6½	"	8.00
4	Fine	6	"	7.20
4	Fine	6½	"	7.20
4	A Fine	5½	"	3.75

420

Aug. 4, 1950	A Fine	6	Large	$4.00
10	Fine	6½	"	7.20
10	A Fine	5½	"	3.75
15	SB	5	"	4.50
18	SB	5½	Regular	4.25
Sept. 5	SB	5	Large	4.50
Oct. 11	SB	4	Regular	3.00
13	A Fine	4½	"	2.25
13	SB	5½	"	4.00
Nov. 21	SB	4	"	3.00
22	Prime	5½	"	7.50
22	Fine	5½	"	6.50
22	Fine	6	"	6.75
22	A Fine	5	"	3.00
22	SB	5½	"	4.00
24	SB	5½	"	4.00
Jan. 8, 1951	Prime	5½	"	7.50
8	Prime	6	"	8.00
8	Fine	6	"	7.15
8	Prime	5½	"	8.25
8	A Fine	6	Large	6.25
10	A Fine	5	Regular	3.25
16	A Fine	6	"	5.25
16	A Fine	5	Large	4.15
16	A Fine	5½	Regular	4.40
22	A Fine	5½	"	5.20
26	A Fine	5½	"	4.40

421

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
Jan. 26, 1951	A Fine 5½	Regular	$5.20
June 15	Fine 6	"	8.00
25	A Fine 5½	"	6.40
28	A Fine 4½	"	3.90
Aug. 22	SB 4½	"	4.55
Sept. 4	Prime 6½	Large	9.15
7	Fine 6½	"	8.55
Oct. 16	Prime 5½	"	8.75
17	Prime 6	Regular	7.50
17	SB Prime 6	"	6.75
23	SB Prime 5½	"	6.50
Nov. 6	SB 5	Large	4.50
26	SB Prime 5½	"	7.00
26	SB Prime 6	"	7.00
26	SB Prime 6½	"	7.00
Dec. 20	Prime 6½	Regular	6.50
20	Fine 5½	"	6.00
20	X 5½	"	6.00
20	Fine 5½	Large	7.00
20	Prime 6½	"	7.50
20	Prime 6	"	7.50
Jan. 7, 1952	A Fine 5½	Regular	4.50
7	A Fine 6	"	4.75
11	A Fine 5½	"	4.50
11	A Fine 6	"	4.75
Feb. 8	A Fine 5½	"	4.50
8	A Fine 6	"	4.75

422

Feb. 13, 1952	A Fine 6	Regular	$4.75
13	A Fine 5½	"	4.50
Mar. 10	Prime 6	Large	7.25
11	Fine 5½	Regular	5.00
11	A Fine 5½	"	3.75
27	Fine 5½	"	5.00
Apr. 10	Prime 5½	Large	7.25
17	Prime 5½	"	7.25
May 26	Prime 5½	Regular	5.75
26	Prime 6	"	6.00
26	Fine 6	"	5.25
26	SB 6	"	4.50
June 9	Prime 6	Large	7.00
12	Prime 5½	Regular	5.75
12	Prime 6½	"	6.25
July 25	Prime 6	Large	7.00
29	Fine 6	Regular	5.25
29	Prime 5½	"	5.75
Aug. 5	Prime 6½	"	6.25
7	SB 5½	Large	5.00
13	Prime 6	"	7.00
13	Fine 5½	"	6.00
22	Prime 7	Regular	6.25
22	Prime 7	Large	7.25
28	Prime 6½	"	7.25

423

Jan. 10, 1950	Prime 5½	Regular	$5.50
10	Prime 6	"	6.25
10	Fine 5½	"	4.75

Howes Oak Angle Taps

Date	Grade			Price Per Dozen Pairs
Feb. 15, 1950	Fine	5½	Large	$5.50
24	Fine	5½	"	5.50
Mar. 1	Fine	5½	"	5.50
Apr. 14	Fine	5	"	4.25
Nov. 22	Prime	5½	Regular	6.50
22	Fine	5½	"	5.50
Jan. 8, 1951	Prime	5½	"	7.75
8	Fine	5½	"	6.60
8	Fine	5½	Large	7.92
26	Fine	5½	"	7.92
June 15	Fine	5½	Regular	7.00

Women's Mooney Flexible Taps

Apr. 28, 1948	Prime	3½	Regular	3.90
28	Prime	4	"	3.90
28	Fine	3½	"	3.50
28	Fine	4	"	3.50
May 18, 1948	Prime	4	"	3.90
18	Prime	5	"	3.90

Women's Boyne City Flexible Taps

Dec. 29, 1952	Prime	3½	Regular	4.00
29	Prime	4	"	4.00

424

Boyne City Flexible Taps

May 18, 1948	Prime	5½	Regular	7.00
July 16	Prime	5½	"	7.00
Oct. 7	Prime	5½	"	7.25
Aug. 31, 1949	Prime	6	"	7.00
Feb. 13, 1950	Prime	5½	"	6.50
27	Prime	5½	"	6.50
Aug. 4	SB	4	"	3.00
Sept. 5	SB	4	"	3.00
Nov. 10	SB	4	"	3.00
June 13, 1951	Prime	5½	"	8.40
July 13	A Fine	5	"	4.90
Feb. 20, 1952	Prime	5½	"	6.50
20	Prime	5	"	5.50
May 6	Prime	5½	"	5.75
9	Fine	5½	"	4.75
21	Prime	6	"	6.25
21	Prime	5½	Large	7.00
June 9	Prime	6	"	7.00
19	Prime	5½	Regular	6.00
July 16	Prime	5½	Large	7.00
Aug. 25	Prime	6	"	7.25

425

Boyne City Dry Foot Angle Taps

Sept. 2, 1947	B	5½	Regular	$4.00
2	B	6	"	4.50
2	#1	5½	"	5.00
6	Prime	5½	"	6.00
6	Fine	5½	"	5.50
24	Prime	5½	"	6.75
24	Prime	5	"	6.00
24	Prime	6	"	7.40

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Sept. 24, 1947	Fine	5½	Regular	$6.00
24	Fine	5	"	5.50
24	Fine	6	"	6.65
24	B	5½	"	4.50
24	Special	5	"	3.50
24	Special	5½	"	4.25
24	#11	5	"	4.50
Oct. 15	Prime	5½	"	6.00
15	Prime	5½	"	6.75
15	Fine	5½	"	5.50
15	Fine	5½	"	6.00
Nov. 12	SB	5	"	4.50
12	SB	6	"	6.50
Mar. 5, 1948	Prime	5½	"	7.00
5	Fine	6	"	7.00
5	SB	6	"	6.25
5	SB	5½	"	5.50
5	SB	5	"	4.40
Apr. 9	SB	5	"	4.00

426

Heavy Boyne City Dry Foot Strips 13"

Date	Grade		Price Per Lb.
Aug. 5, 1949	Prime		$.90
Feb. 13, 1950	Prime		.80
15	SB Prime—Military 9/12		.80
28	SB Prime—Military 9/12		.80
Apr. 26	SB Prime—Military 9/12		.90
Oct. 17, 1951	Fine		1.00
17	Prime		1.10
Feb. 22, 1952	Prime		.85
Mar. 27	Prime		.85
Oct. 23	Prime	10–12 Iron	.92
23	Fine	10–12 Iron	.82

Sanded Flexible Strips

May 21, 1948	Prime 7"	.80
Aug. 21	Prime 7"	.85
Jan. 10, 1950	Irregular Clear	.58
Jan. 8, 1951	Prime 7"	.90
Oct. 17	Irregular Clear	.87

3½–4½ Top Lift Strips

Jan. 13, 1949	.60
Jan. 8, 1951	.70
Feb. 22, 1952	.58

Boyne City Heavy Flexible Strips

Aug. 31, 1949	Prime	.95
31	Fine	.95

427

Boyne City Light Flexible Strips

Nov. 9, 1951	Prime 7½	$1.00
July 25, 1952	Prime 7½	1.10

	Men's Soles 8/12	Price Per Pair
Aug. 19, 1948	Prime 10/11	.92

Mooney Mfrs Full Soles

Oct. 23, 1952	Prime 10–11	Large	.75

	Price Per Lb.
Branded and Reject Angle Taps	
Jan. 13, 1949	$.30
Miscuts	
Oct. 7, 1952	.50
Heavy Wide Ends	
June 15, 1951	.45
Sept. 30, 1952	.33
Boyne City Dry Foot Butts	
Aug. 7, 1952	.30
Dec. 9	.33

428

Public Shoe Service Corporation
(Including Hub Leather and Findings Corporation)
Mooney Right, Left Men's Flexible Taps

Date		Grade		Price Per Dozen Pairs
Nov. 10, 1947	SB	4	Regular	$2.75
Dec. 26	SB	4	"	3.75
Jan. 14, 1948	SB	4½	"	4.00
Mar. 18	SB	4½	"	4.00
24	SB	4½	"	4.00
Apr. 14	SB	4½	"	4.00
16	SB	4½	"	4.00
21	SB	4½	"	4.00
28	SB	4½	"	4.00
Sept. 29, 1949	Fine	5	"	4.75
Dec. 16	SB	4½	"	3.00
16	SB	4½	"	2.75
16	SB	4	"	2.75
Mar. 16, 1950	Fine	5	"	4.50
Oct. 16	SB	4	"	3.25
Nov. 30	SB	4	"	3.25
Oct. 4, 1951	Fine	5	"	5.75
July 3, 1952	SB	4½	"	3.25
3	SB	4	"	3.25
Oct. 22	#1	5	"	3.75
June 2, 1954	SB	4½	"	2.25

429

Boyne City Dry Foot Angle Taps

Sept. 17, 1947	Prime	5	Regular	$5.75
17	Fine	5	"	5.25
17	Fine	5½	"	5.75
17	Fine	6	"	6.50
17	#1	4½	"	3.75
17	#1	5	"	4.50
17	#1	4½	Large	4.50
Oct. 8	Prime	5	Regular	5.75
8	Fine	6	"	6.50
8	Fine	5½	"	5.75
Nov. 4	SB	5	Large	5.75
19	Prime	5	Regular	5.75
19	Fine	5½	"	5.75
19	Fine	6	"	6.50
Dec. 4	SB	5	Large	5.75

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Jan. 6, 1948	Prime	5	Regular	$5.75
6	SB	5	"	4.50
6	SB	6	Large	8.00
14	SB	6	"	8.00
Feb. 5	SB	6	"	8.00
5	#1	4½	"	3.50
12	#1	5	"	5.50
Mar. 12	SB	5	"	5.50
Apr. 1	Fine	5	"	5.50
1	SB	5	"	5.50
5	SB	5½	"	5.50

430

Apr. 3, 1948	SB	5	Regular	$3.85
3	SB	5	Large	5.50
3	SB	4½	Regular	3.00
3	#1	5	"	3.85
3	#1	4½	"	3.00
May 6	SB	5½	Large	5.50
21	SB	5	"	5.50
21	#1	5	"	5.50
24	SB	5	"	5.50
5	#1	5	"	5.50
June 2	Fine	6	Regular	7.00
8	Fine	6	"	7.00
8	#1	5	Large	5.50
9	SB	5	"	5.50
16	Prime	5	Regular	5.75
16	Prime	5	"	6.50
16	#1	5	Large	5.50
July 1	SB	4½	Regular	3.00
7	Prime	5	"	6.50
7	Fine	5½	"	6.50
7	Fine	5	"	6.00
7	SB	5½	Large	7.00
10	Fine	5	Regular	6.00
10	Fine	5½	Large	8.00
10	Fine	5½	Regular	6.50
10	SB	6	Large	7.40

431

July 19, 1948	SB	5	Large	$5.50
23	SB	5	"	5.50
28	SB	5	"	5.50
Aug. 4	SB	5	"	5.50
5	SB	5	"	5.50
25	Prime	5	Regular	6.50
25	Fine	5½	"	6.50
25	SB	5	Large	5.50
Sept. 24	SB	6	"	7.40
24	SB	5	"	5.50
24	SB	5½	"	7.00
29	SB	5	"	5.65
Oct. 12	Prime	5	Regular	6.50
12	Fine	5	"	6.00
12	Fine	5½	"	6.50
12	SB	4½	Large	3.50
20	SB	5½	"	7.00
20	SB	5	"	5.65
22	SB	5	"	5.65
29	SB	5	"	5.65

Boyne City Dry Foot Angle Taps

Date		Grade			Price Per Dozen Pairs
Nov.	5, 1948	SB	5½	Regular	$7.00
	10	Fine	5	"	6.00
	27	SB	5	Large	5.65
Dec.	2	SB	5	"	5.65
	10	SB	5	"	5.65
	10	B	4½	Regular	2.25
432					
Jan.	14, 1949	SB	5	"	3.85
	14	SB	4½	"	3.00
	14	B	4½	"	2.25
	17	SB	5	"	3.85
	17	SB	4½	"	3.00
	17	B	4½	"	2.25
	17	B	4½	"	2.25
	21	SB	5	"	3.85
	21	SB	4½	"	3.00
Feb.	21	SB	5	Large	5.65
Mar.	8	B	4½	Regular	2.25
	11	Fine	5½	"	6.00
	11	SB	5½	"	4.85
Apr.	13	B	4½	"	2.25
May	6	Fine	6	"	5.75
Aug.	3	Fine	4½	"	3.00
	3	SB	4½	"	2.75
	5	SB Prime	5	"	4.75
	5	SB Prime	5½	"	5.65
	26	SB	5½	"	4.25
	29	A Fine	4	Large	2.25
Sept.	30	SB	4½	Regular	2.35
Dec.	1	SB	5½	"	4.25
	1	SB	4½	Large	5.50
	20	SB	4½	Regular	2.20
	20	SB	5½	Large	5.50
	28	SB	5½	"	5.50
433					
Dec.	30, 1949	SB	5½	"	5.50
Jan.	17, 1950	SB	5	"	4.25
	25	SB	5	"	4.25
Feb.	2	SB	5	"	4.25
	9	SB	5	"	4.25
	16	SB	5	"	4.25
Mar.	2	SB	5	"	4.25
	7	SB	5	"	4.25
	16	Fine	5	Regular	5.50
	17	SB	6	"	4.50
	17	SB	5½	"	4.00
	17	SB	5½	Large	5.25
	17	SB	5	"	4.10
	20	SB	5½	Regular	4.00
	20	SB	5	Large	4.10
	27	SB	5	Regular	2.80
	28	SB	5	"	2.80
July	18	SB	4½	Large	2.65
	28	SB	5	Regular	2.90
	28	SB	4½	"	1.95
Aug.	9	SB	4½	Large	2.65
Oct.	17	SB	5½	Regular	5.25
Nov.	22	SB	5½	Large	6.75

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Nov. 29, 1950	SB	5½	Large	$6.75
30	SB	5½	"	6.75
434				
Dec. 11	SB	5½	Large	6.75
13	SB	5½	"	6.75
18	SB	5½	"	6.75
Feb. 12, 1951	SB	5½	Regular	6.50
12	SB	5	Large	6.30
Mar. 13	SB	5	"	6.30
13	SB	5½	"	8.00
16	SB	5	"	6.30
16	SB	5½	"	8.00
23	A Fine	4½	Regular	2.65
23	A Fine	5	Large	4.50
23	A Fine	5½	"	6.25
29	A Fine	4½	Regular	2.65
29	A Fine	4½	Large	3.25
29	A Fine	5	"	4.50
29	A Fine	5½	"	6.25
Apr. 9	A Fine	4½	Regular	2.65
9	A Fine	5	Large	4.50
9	A Fine	5½	"	6.25
June 1	A Fine	4½	Regular	2.65
Sept. 6	SB	4½	"	4.55
Oct. 2	SB	5	Large	6.25
5	Prime	5	"	7.70
Dec. 14	SB	4½	"	4.00
17	SB	4½	Regular	3.75
Jan. 15, 1952	SB	4½	Large	4.00
17	SB	4½	"	4.00
22	SB	4½	"	4.00
435				
Mar. 27	SB	5	"	4.50
July 8	SB	5½	"	4.80
8	SB	5	"	4.25
8	Prime	5	"	6.00
Aug. 25	SB	5½	"	4.75
26	SB	6	Regular	4.00
26	SB	5½	"	3.75
Oct. 30	SB	4½	"	2.85
Dec. 4	SB	6	Large	4.90
4	SB	5½	"	4.75
Jan. 12, 1953	SB	5	"	4.25
Apr. 9	X	5	Regular	4.25
9	X	5½	"	4.75
9	X	6	Large	6.00
Dec. 7	SB	5½	Regular	3.50
7	SB	4½	"	2.50
7	SB	6	"	4.00
7	SB	4½	Large	3.25
7	SB	5	"	3.75
Apr. 7, 1954	SB	5½	Regular	3.40
May 27	SB	4½	Large	2.75
June 30	SB	4½	Regular	2.00
July 15	SB	Prime 5½	Large	4.25
Aug. 26	SB	4½	Regular	2.00
30	SB	5	Large	3.50
436				
Oct. 12, 1954	SB	4½	Regular	2.00

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Oct. 12, 1954	SB	4½	Large	$2.75
12	SB	5	"	3.25
19	SB	5	"	3.25
27	SB	5	"	3.25

437

Rock Oak Angle Taps

Feb. 12, 1951	SB Prime	5	Regular	5.15
12	SB Prime	5½	"	6.50
15	SB Prime	5½	Large	8.00
15	SB Prime	5	"	6.30
Mar. 20	SB Prime	5	"	6.30
20	SB Prime	5½	"	8.00
23	SB Prime	5	"	6.30
27	SB Prime	5½	"	8.00
27	SB Prime	5	"	6.30
29	SB Prime	5	"	6.30
29	SB Prime	5½	"	8.00
Apr. 4	SB Prime	5	"	6.30
18	SB Prime	5½	"	8.00
18	A Fine	4½	"	3.25
18	A Fine	5	"	4.50
18	A Fine	5½	"	6.25
23	SB	5	"	4.50
May 3	SB	5	"	4.50
3	SB	5½	"	6.25
21	SB	5	"	4.50
29	SB	4½	"	3.25
June 1	A Fine	5	"	4.50
1	A Fine	5½	"	6.25
15	SB	4½	Regular	2.65
15	SB	4½	Large	3.25
15	SB	5	"	4.50
15	SB	5½	"	6.25

438

June 25, 1951	SB	4½	Regular	2.65
25	SB	5	Large	4.50
25	SB	5½	"	6.25
25	SB	4½	"	3.25
Aug. 31	A Fine	4½	Regular	2.65
Sept. 13	A Fine	4½	"	2.65
13	A Fine	4½	Large	3.25
13	A Fine	5	"	4.50
13	A Fine	5½	"	6.25
Oct. 2	A Fine	4½	"	3.25
2	A Fine	5	"	4.50
9	SB	4½	Regular	2.65
11	SB	5	Large	4.50
22	SB Prime	5½	"	8.00
22	SB	5½	"	6.25
23	SB	4½	Regular	2.65
25	SB Prime	5½	Large	8.00
25	SB	5½	"	6.25
Nov. 1	SB	5½	"	6.25
11	SB Prime	5½	"	8.00
14	SB Prime	5½	"	8.00
14	SB	5½	"	6.25
21	SB Prime	5½	"	6.25
21	SB	5½	"	8.00

Rock Oak Angle Taps

Date	Grade			Price Per Dozen Pairs
Nov. 29, 1951	SB	5½	Large	$6.25
30	SB	4½	Regular	2.65
30	SB	4½	"	2.65
30	SB	5	Large	6.25
439				
Dec. 10	SB	5½	"	6.25
Mar. 27, 1952	SB Prime	5	"	4.50
May 8, 1953	Prime	5	"	5.25
8	Prime	6	"	6.00
8	Prime	5½	Regular	4.75
Apr. 7, 1954	Prime	5	"	4.25
7	Prime	5	Large	5.00
June 30	Prime	5½	Regular	5.00
30	SB Prime	5½	"	3.40
30	SB Prime	6	"	4.00
30	SB Prime	6	Large	4.50
July 15	Fine	5	"	3.50
Aug. 30	Prime	5	"	5.00
30	SB Prime	5½	"	4.50
Sept. 9	Prime	5	"	5.00
9	Prime	5½	"	5.75
30	Prime	5½	"	5.75
30	Prime	5	"	5.00
Oct. 19	Prime	5	"	5.00
19	Prime	5½	"	5.75

440

All American Angle Taps

Dec. 10, 1948	B	4½	Regular	2.25
Jan. 17, 1949	B	4½	"	2.25

Boyne City Dry Foot Strips

Date	Grade			Price Per Lb.
Nov. 10, 1947	B Clear	13"		$1.00
Jan. 27, 1948	Fine	13"	10 up	1.05
July 16	SB	13"		.95
Sept. 16	SB	13"		.95
23	SB	13"		.95
23	SB	13"		.95
Mar. 9, 1949	Fine	13"		.85
July 22	Fine	13"		.85
Apr. 9, 1953	Fine	10–12		.80
Sept. 23	Fine	10–12		.80
Dec. 3	Fine	10–12		.80
Apr. 7, 1954	Fine	10–12		.75
June 30	Fine	10–12		.75

441

Boyne City Flexible Taps

Date	Grade			Price Per Dozen Pairs
Mar. 24, 1948	SB	4½	Regular	$4.00
Apr. 14	SB	4½	"	4.00
28	SB	4½	"	4.00
Aug. 3, 1949	Fine	4½	"	3.00
Dec. 16	Fine	4	"	3.00
16	SB	4½	"	2.75

Boyne City Flexible Taps

Date	Grade			Price Per Dozen Pairs
Dec. 16, 1949	SB	4	Regular	$2.75
Feb. 21, 1950	Prime	4	"	3.00
Mar. 17	Fine	4	"	3.00
May 15	Fine	4	"	3.00
Oct. 16	SB	4	"	3.25
16	Prime	4	"	4.50
Nov. 1	SB	4	"	3.25
Dec. 16	Fine	4	"	3.00
16	SB	4½	"	2.75
16	SB	4	"	2.75
July 20, 1951	SB	4½	"	4.55
Sept. 13	SB	4½	"	4.55
Oct. 4	SB	5½	Large	8.00
July 3, 1952	SB	4½	Regular	3.25
7	SB	4	"	3.25
7	SB	4½	"	3.25
16	SB	4	"	3.25
16	SB	4½	"	3.25

442

Branded and Reject Taps

Date	Grade	Price Per Lb.
Aug. 21, 1947	Regular	$.42
Sept. 6	"	.40
Oct. 12, 1948	Large	.36
Nov. 3	"	.36
5	"	.36
26	"	.36
Dec. 10	"	.36
23	"	.36
27	"	.38
28	"	.36
Jan. 4, 1949	"	.36
5	"	.36
14	Regular	.28
June 22	"	.20
25	"	.20
Aug. 5	"	.23
31	"	.21
Sept. 9	"	.21
13	"	.21
14	"	.21
16	"	.21
30	"	.20
Apr. 10, 1950	Large	.25
May 22	"	.25
31	"	.25
Nov. 10	"	.25
24	"	.25

443

Oct. 9, 1951	Regular	.38
17	"	.38
22	Large	.43
25	"	.43
26	Regular	.38
Nov. 1	Large	.43
2	Regular	.38
5	Large	.43

Branded and Reject Taps

Date	Grade	Price Per Lb.
Nov. 8, 1951	Regular	$ .38
May 27, 1952	"	.25
27	Large	.25
June 2	Regular	.25
2	Large	.25
4	Regular	.25
4	Large	.25
5	Regular	.25
5	Large	.25
5	Regular	.25
11	"	.25
11	Large	.25
12	Regular	.25
July 25	"	.25
29	"	.25
Aug. 22	Extra Large	.25
27	" "	.25
Sept. 14	" "	.25
Oct. 21	" "	.25

444

Miscut Angle Taps

May 12, 1948	Regular	.55

Boyne City Flexible Branded and Reject Taps

Sept. 29, 1949	Regular	.20
Oct. 11	"	.20

Amo Flex Taps

Date	Grade	Price Per Dozen Pairs
June 30, 1954	Prime 5 Regular	$4.00

Sterling Oak Angle Taps

July 15, 1954	Prime 5 Large	3.50

Boyne City Women's Flexible Taps

May 14, 1953	Prime 4	4.25
14	Fine 4	3.75
14	Semi-Fine 4	3.25

445

Ends

Date	Grade	Price Per Lb.
Aug. 1, 1950	Wide	$.26
1	Miscut	.30
25	Wide Finders	.26
25	Miscut Finders	.30
Sept. 5	Wide Finders	.26
5	Miscut Finders	.30
18	Wide Finders	.26
18	Miscut Finders	.30

Rock Oak Strips

Oct. 14, 1951	SB Prime 13"	1.00

Boyne City Dry Foot Heavy 13" Strips

Date	Grade	Price Per Lb.
Apr. 3, 1948	SB Prime	$ .80
Jan. 6, 1949	Fine	.90
May 4	Fine	.85
Jan. 9, 1950	SB Prime	.80
Mar. 25, 1951	SB Prime	1.02
Mar. 27, 1952	SB Prime	.75

Boyne City Finders Strips

Sept. 17, 1949	Fine	13"	.85
Nov. 3	Fine	13"	.85
Dec. 23	Fine	13"	.85
May 11, 1950	B Clear	13"	.75
June 30	B Clear	13"	.75
Dec. 1	Prime	13"	1.05
11	Fine	13"	.95
Aug. 26, 1952	Fine	13"	.73

446

Boyne City Dry Foot Branded and Reject Taps

Feb. 5, 1953	Extra Large	.25
July 29	Regular	.20
31	"	.20

Choice Angle Taps

May 19, 1953	.55
June 4	.52½
9	.52½

Mooney Full Soles

Date	Grade	Price Per Pair
Jan. 6, 1953	Prime 10–11 Large	$ .88
May 4	Prime 10–10½—8–12 M	.75
5	Prime 10–10½—8–12 M	.75
Apr. 9, 1954	Prime 11–11½—8–12 M	.74
9	Prime 11–11½—11 M	.77
9	Prime 10–10½—8–12 M	.70
Oct. 26	Prime 10–10½—8–12 M	.65
28	Prime 10–10½—8–12 M.	.65
Nov. 9	Prime 11–12—12 M	.88

447

Mooney Manufacturers Full Soles

Nov. 13, 1950	Fine	12	Large	1.00
22	Fine	12	"	1.00
Jan. 25, 1951	Fine	13	"	1.00
Nov. 7, 1952	Prime	10–11	"	.88
25	Prime	10–11	"	.88
Dec. 12	Prime	10–11	"	.88
16	Prime	10–11	"	.88

Boyne City Dry Foot Soles

Feb. 5, 1952	Fine	11–12	.90

448

Men's Soles

Date	Grade			Price Per Pair
Nov. 11, 1947	Prime	10–11	Size 12	$.82
Dec. 23	Prime	10–11	Size 8–12	.86
May 6, 1948	Prime	10–11	Size 12	.87
July 14	Prime	10–11	Size 8–12	.88
Oct. 13	Prime	10–11	Size 8–12	.85
Dec. 2	Fine	11–12	Size 8–12	.83
20	Prime	10–11	Size 8–12	.88
27	Prime	10–11	Size 8–12	.88
Jan. 6, 1949	Prime	10–11	Size 8–12	.88
Mar. 23	Prime	10–11	Size 8–12	.85
Apr. 5	Prime	10–11	Size 12	.90
June 22	Prime	10–11	Size 8–12	.80
Sept. 30	Prime	10–11	Size 8–12 S	.80
30	Prime	10–11	Size 9–13C	1.10
Oct. 5	Prime	10–11	Size 12 S	.90
Dec. 9	Prime	10–11	Size 8–12 S	.83
Jan. 16, 1950	Prime	10–11	Size 8–12	.83
23	Prime	10–11	Size 8–12	.83
24	Prime	10–11	Size 8–12	.83
Mar. 28	Prime	10–11	Size 8–12	.78
Apr. 7	Prime	10–11	Size 8–12	.78
20	Prime	10–11	Size 8–12	.78
Sept. 1	Prime	10–10½	Size 8–12N	.78
June 15, 1951	Prime	10–11	Size 8–12N	1.00
28	Prime	10–11	Size 8–12N	1.00

449

July 31, 1951	X-A-OX	10–10½	Size 11B	1.14
31	X-A-OX	10–10½	Size 12B	1.20
Aug. 1	X-A-OX	11–11½	Size 12 Brogue	1.25
1	X-A-OX	11–11½	Size 12N	1.25
	Stamped Prime 11–12			
1	X-A-OX	10–10½	Size 12N	1.20
	Stamped Prime 10–11			
3	Prime	10–11	Size 8–12N	1.00
	Stamped (S) Prime 10–11			
17	Prime	10–11	Size 8–12N	1.00
	Stamped Mooney Prime 10–11			
Mar. 13, 1952	Prime	10–11	Size 8–12D	.80
18	Prime	10–11	Size 8–12D	.80
Apr. 2	Prime	10–11	Size 8–12D	.80
15	Prime	10–11	Size 8–12D	.80
17	Prime	10–11	Size 8–12D	.80

450

Rockford Leather Store

Boyne City Dry Foot-Angle Taps

Date	Grade			Price Per Dozen Pairs
Sept. 11, 1947	Prime	5½	Regular	$6.00
11	Prime	5	"	5.00
11	Fine	5½	"	5.00
18	K	5	Large	5.00
Nov. 12	Prime	5½	Regular	6.00
12	Fine	5½	"	5.50
Sept. 3, 1948	SB Prime	5½	"	6.40
3	SB Prime	6	"	6.80
3	SB	5½	"	5.80

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Oct. 1, 1948	Prime	6	Large	$9.50
13	Fine	5	Regular	6.25
Nov. 3	SB	5½	"	5.80
3	SB	5½	Large	6.95
3	Fine	6	"	8.65
18	Prime	6	"	9.50
18	SB	5½	"	6.95
18	SB	5½	Regular	5.80
Feb. 9	Prime	5½	Large	8.65
Mar. 15	SB	5½	Regular	5.80
25	SB	4½	"	3.50
25	SB	5	Large	5.75
30	SB	5½	Regular	5.80
Apr. 27, 1949	Prime	5½	Large	8.65
27	Prime	5½	Regular	7.00
27	B	5½	"	4.25
27	SB Prime	5½	Large	6.95
July 22	Prime	6	Regular	7.90
26	Prime	5½	"	7.00
26	Fine	5½	"	7.00
Sept. 1	SB	5	Large	5.75
Dec. 1	Prime	5½	"	8.10
Feb. 28, 1950	Prime	6	"	8.25
28	Prime	6	Regular	7.00
28	Prime	5½	Large	7.75
28	Prime	5½	Regular	6.50
July 7	Prime	5½	Large	7.40
Aug. 18	SB	4½	Regular	2.50
18	SB Prime	4½	"	3.00
18	K	4½	"	3.00
Sept. 19	Prime	6	Large	7.60
19	Prime	5½	"	7.40
19	SB	5½	Regular	4.25
26	SB	5	Large	4.25
Jan. 26, 1951	Prime	5½	Regular	6.50
26	Fine	5	"	4.50
26	SB Prime	5½	"	5.00

Boyne City Flexible Taps

Aug. 20, 1948.	SB	5½	Regular	5.80
20	SB	5	"	5.00
Oct. 13	Prime	5½	"	7.25
13	Prime	5½	"	6.25
Nov. 18	Prime	5	"	7.00
Mar. 15, 1949	SB	5	"	4.80
25	SB	5	"	4.00
30	SB	5½	"	5.80
July 22	Prime	5	"	6.50
Sept. 1	Prime	5	"	6.50
1	Prime	5½	"	7.00
1	SB	5½	"	5.80
July 7, 1950	Prime	5	"	6.00
Sept. 26	SB	5	"	3.75

Mooney Right & Left Taps

Dec. 1, 1949	Fine	5	Regular	4.75
1	Fine	5½	"	5.75
1	Fine	6	"	6.00
12	Fine	5	"	4.75
12	Fine	5½	"	5.75

452

Boyne City Dry Foot Strips

Date	Grade	Price Per Lb.
Nov. 3, 1948	Prime 13"	$ .95
Mar. 30, 1949	Prime 13"	.95

Heavy Finders Strips

Feb. 9, 1949	Prime 13"	.95
July 26	Prime 13"	.95
Feb. 28, 1950	Prime 13"	.95

453

Springfield Leather Store

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
Sept. 11, 1947	Prime 5	Regular	$5.00
11	Fine 5	"	4.50
11	Fine 4½	"	3.75
11	#1 5	"	4.00
Nov. 12	Fine 5	"	5.25
12	SB 5	"	4.50
26	Prime 5	Large	5.75
26	Prime 5	"	6.25
26	Prime 5½	"	7.00
26	Fine 5½	"	6.50
Dec. 1	Prime 5½	Regular	6.00
1	Prime 5	"	5.00
1	Fine 5½	"	5.50
1	Fine 4½	"	3.65
Jan. 22, 1948	Fine 5	"	5.25
22	SB 5	"	4.50
Apr. 7	Prime 5	"	5.50
7	SB 5	"	4.50
28	Prime 4½	"	4.25
28	Prime 5	"	5.50
June 16	Prime 5	"	6.70

454

June 16, 1948	Fine 5	Regular	5.25
16	Fine 5½	"	5.50
16	Fine 4½	"	3.60
16	SB 5	"	4.50
16	SB 5	"	4.70
22	Fine 4½	"	3.60
July 7	Fine 4½	"	3.60
14	Fine 4½	"	3.60
Aug. 4	Prime 5	"	6.75
4	SB 5	"	4.80
16	Fine 5	"	6.25
16	Prime 4½	"	5.00
Oct. 6	Prime 5	Large	8.10
6	Fine 5	Regular	6.25
6	Prime 5	"	6.75
6	SB 5	"	4.80
20	Prime 5½	Large	8.65
Dec. 17	Prime 5	Regular	6.75
Feb. 25, 1949	Prime 5	"	6.50
25	SB 5	"	4.80
Apr. 13	SB 5	"	4.80
May 12	Prime 5	"	6.50

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
May 12, 1949	SB	5	Regular	$4.80
Sept. 1	Prime	5½	"	7.00
1	Fine	5½	"	7.00
1	SB	5	"	4.80
Oct. 12	Prime	5	Regular	6.50
12	SB	5	"	4.80
Nov. 7	SB	5	Large	4.50
7	SB	5	Regular	3.75
25	Fine	5½	"	6.00
25	Fine	5½	Large	7.20
Dec. 1	Prime	5	Regular	6.25
1	SB	5	"	3.75
6	Fine	5½	"	6.00
Jan. 19, 1950	Prime	5	"	6.25
19	SB	5	"	4.50
19	SB	5½	"	4.50
Feb. 9	Fine	5½	"	5.75
9	SB	5	"	3.50
May 19	SB	5	Large	4.00
19	SB	5½	"	5.25
19	SB	5	Regular	3.50
31	Prime	5	Large	6.90
June 5	Prime	5	Regular	6.00
9	Prime	5	"	6.00
Aug. 2	Prime	5	"	6.00
Sept. 12	Prime	5	"	6.00
19	Prime	5	"	6.00
19	Prime	5½	"	6.50
19	Prime	5	Large	6.75
19	Prime	5½	"	7.40
19	Fine	5½	Regular	5.25
Jan. 22, 1951	Prime	5	"	6.00
22	Fine	5	"	4.50
22	SB Prime	5	"	4.50
Sept. 13	SB Prime	5	"	5.00
Oct. 2	Prime	5	"	7.00
2	Fine	5½	"	7.00
23	Fine	5	"	7.00
23	Fine	5½	Large	8.40
Mar. 4, 1952	Fine	5½	Regular	5.50
4	Fine	5½	Large	6.50
May 5, 1953	Prime	5	Regular	6.00
Apr. 1, 1954	Prime	5	"	5.75
1	Prime	5½	"	6.00
May 11	SB	5	"	3.00
11	SB	5½	"	3.75
July 30	Prime	5	"	5.75
30	Prime	5½	"	6.00
30	SB	5½	"	3.75

Boyne City Flexible Taps

Oct. 13, 1948	Prime	5	Regular	7.00
13	Prime	5½	"	7.25
13	Fine	5	"	6.25
13	Fine	5½	"	7.00
Aug. 30, 1949	SB	5	"	4.80
30	Prime	5	"	6.50
Sept. 1	Fine	5	"	6.25

457

Mooney Right & Left Flexible Taps

Date	Grade		Price Per Dozen Pairs
May 17, 1948	Prime 5	Regular	$5.80
17	Fine 5½	"	5.80
Dec. 1, 1949	Fine 5	"	4.75
1	Fine 5½	"	5.75
12	Fine 5	"	4.75
12	Fine 5½	"	5.75

Heavy Finders Strips

Date	Grade	Price Per Pound
Nov. 12, 1947	BC Prime	$ .95
Jan. 2, 1948	Prime 13"	.95
Oct. 6	Prime 13"	.95
Feb. 25, 1949	Prime 13"	.95
May 12	Prime 13"	.95
Aug. 3	Prime 13"	.95
Oct. 5	Prime 13"	.95
Jan. 19, 1950	Prime 13"	.95
May 19	Prime 13"	.85
19	Prime 13"	.85
31	Prime 13"	.85
June 9	Prime 13"	.85
Dec. 1	Prime 13"	1.05
Mar. 4, 1952	Prime 13"	.85

458

Men's Soles

Date	Grade	Price Per Pair
Nov. 12, 1947	Prime 10–11	$ .86
12	Prime 11–12	.89
June 8, 1948	Prime 10–11	.92
July 9	Prime 11–12	.96

459

19. B. The prices charged by this defendant to the plaintiffs for items of findings during the period July 15, 1947 to November 11, 1954 were as follows:

Kindschi Leather Co.

Boyne City Dry Foot Angle Taps

Date	Grade		Price Per Dozen Pairs
Sept. 6, 1947	Fine 5½	Regular	$5.75
6	Prime 5½	"	6.25
Oct. 18	Prime 5½	"	7.25
18	SB Prime 5½	"	6.00
18	SB Prime 6	"	7.00
18	SB Brd 5	"	5.25
July 10, 1948	Fine 5½	"	6.75
10	Prime 5½	"	7.20
10	Prime 5	"	6.75
July 28, 1949	Prime 5½	"	6.50
28	Prime 6	"	7.15

Boyne City Dry Foot Angle Taps

Date		Grade		Price Per Dozen Pairs
July	28, 1949	Prime 5	Regular	$6.00
	28	Prime 6	Large	8.25
	28	Prime 5½	"	7.50
Oct.	6	Prime 6	Regular	7.25
Dec.	6	Prime 5½	"	6.75
	6	Prime 5½	Large	7.75

460

Mooney Right & Left Men's Flexible Taps

July	26, 1948	Fine 5	Regular	6.70
	26	Fine 5½	"	7.20
	26	Prime 5½	"	7.60
	26	Prime 5	"	7.20
Aug.	11	Prime 5½	"	7.60
Oct.	6, 1949	Fine 5½	Large	7.00
	6	Fine 6	Regular	6.25
	6	Prime 5½	Large	8.00
	6	Prime 6	Regular	7.25

Boyne City Dry Foot Heavy Finders Strips

Date	Grade	Price Per Pound
Nov. 24, 1947	Prime 13"	$1.15

461

Norman P. Shaffer & Son

Boyne City Dry Foot Angle Taps

Date		Grade		Price Per Dozen Pairs
Sept.	24, 1947	#1 6	Regular	$6.25
	24	#1 5½	"	5.50
	24	Fine 6	"	6.75
	25	#1 5½	"	5.25
	25	Prime 5½	"	6.25
Oct.	8	Fine 6	"	6.50
Nov.	5	Prime 5½	"	7.25
	5	Fine 5½	"	6.50
	5	SB 5½	"	6.00
	14	Prime 6	Large	8.00
May	26, 1948	Prime 5½	"	8.65
	26	SB 6	"	7.60
	26	SB 6½	"	7.90
June	2	SB 6	"	7.90
	2	SB 6	Regular	5.75
	2	SB 5	"	4.00
	2	SB 6	"	6.35
	2	Prime 6	"	7.10
	2	Prime 5	"	6.00
	2	Prime 4½	"	4.60
	2	Fine 4½	"	4.00
	2	Fine 6½	"	7.40
July	19	Prime 6½	"	8.15
	19	Prime 5½	"	7.20
	19	Fine 5½	"	6.75

462

Sept.	3, 1948	Prime 5½	Large	8.65
	3	Prime 6	Regular	7.90

Boyne City Dry Foot Angle Taps

Date	Grade			Price Per Dozen Pairs
Sept. 3, 1948	Prime	5½	Regular	$6.60
3	Prime	6½	"	7.50
3	Fine	5½	"	7.00
3	Fine	6	"	7.20
Oct. 6	Fine	5½	"	6.75
22	Prime	5½	"	7.40
22	Fine	6½	"	7.40
Nov. 12	SB	5½	Large	7.00
Feb. 4, 1949	Fine	5½	Regular	6.75
4	Prime	6	"	7.90
Mar. 8	Prime	5½	"	7.00
8	Prime	6	"	7.50
Apr. 29	SB	6	"	5.25
29	SB	6	Large	6.25
July 27	Fine	6	Regular	6.50
Jan. 10, 1950	Prime	5½	Large	8.00
Mar. 20	Prime	5½	"	7.50
20	Prime	5½	Regular	6.50
20	SB	6	"	4.50
20	SB	5½	Large	5.25
Apr. 28	Fine	5½	"	6.25
28	SB Prime	5½	Regular	5.00
28	SB Prime	6	"	5.25
28	SB Prime	5	"	4.50

463

Mooney Right and Left Men's Flexible Taps

Nov. 14, 1947	Prime	5½	Regular	$6.55
Oct. 1, 1948	Prime	6	"	8.10
1	Prime	5½	"	7.40
1	Fine	5½	"	6.75
18	Prime	6	"	8.10
18	Prime	5½	"	7.60
Sept. 29, 1949	SB	5½	" (size 16)	6.00
29	SB	6	"	7.00
29	Prime	5	" (size 16)	7.00
Nov. 4	Fine	6	"	6.00
15	Fine	5½	" (size 16)	7.00
15	SB	5½	" (size 16)	6.00
Feb. 1, 1950	Prime	5	" (size 16)	7.00
Mar. 17	Fine	5	"	4.50

Howes Oak Angle Taps

Feb. 1, 1950	Prime	5½	Regular	5.75

Mooney Women's Flexible Taps

Oct. 1, 1948	Fine	4	Regular	3.40
1	Fine	3½	"	3.40

Boyne City Flexible Taps

1948	Prime	5½	Regular	6.80

464

Men's Soles

Date	Grade			Price Per Pair
Nov. 11, 1947	Prime	11/12	Size 8–12S	$.94
Feb. 8, 1950	Prime	10/11	Size 12S	.80
8	Prime	11/12	Size 11S	.85

Heavy Boyne City Finders Strips

Date	Grade		Price Per Lb.
July 27, 1949	Fine	13"	$.90

Mooney Flexible Stripe

Sept. 13, 1948	Prime	13"		$1.20
Mar. 24, 1949	Prime	13"		1.10
May 19	Prime	13"		1.05
Aug. 26	Prime	13"		1.00
Nov. 15	Prime	13"	9/10 iron	1.05
Feb. 1, 1950	Prime	13"		1.00
1	SB	13"	9/11 iron	.80
Apr. 28	Prime	13"		.95

Finders Strips 10/11 iron

Feb. 22, 1949	Fine	13"	.95
Apr. 20	Prime	13"	.95

Boyne City Flexible Strips

1947	Prime	7"	1.05
Jan. 10, 1950	Clear Irregular Sanded Butt Strips		.58

3½–4½ Toplift Strips

Sept. 25, 1947	.60
Oct. 5, 1949	.50

Reject Angle Taps

Oct. 6, 1948	.38

20. The company has continued to sell in Chicago since its organization.

HENRY F. KEATING

Duly sworn to by Henry F. Keating, jurat omitted in printing.

[File endorsement omitted]

In the United States Court of Appeals
for the Seventh Circuit

No. 11472 Original
No. 11473 Original

HOWES LEATHER COMPANY, INC. AND MONTGOMERY WARD & CO., INC., PETITIONERS,

vs.

THE HON. WALTER J. LABUY,

UNITED STATES DISTRICT JUDGE,
RESPONDENT

HOWES LEATHER COMPANY, INC., PETITIONER

vs.

THE HON. WALTER J. LABUY,
UNITED STATES DISTRICT JUDGE,
RESPONDENT

MOTION OF REPONDENT TO CONSOLIDATE CASES—
Filed June 14, 1955

Respondent respectfully moves this Court as follows:

1. By leave of Court a petition for Writ of Mandamus was filed in both of the above entitled causes on May 26, 1955.

2. Both of the above entitled causes seek mandatory relief praying for an order of this Court to compel the respondent to revoke an order of reference entered by him in both cases referring said cases to a Master in Chancery for trial.

3. Both cases in the trial Court are companion cases and

both cases in this Court raise the same issues as to the propriety of the order of reference.

467 WHEREFORE, respondent prays that the two cases be consolidated in this Court.

THE HON. WALTER J. LABUY, *Respondent*
EDWARD H. HATTON, *His Attorney*

June 13, 1955

467A CERTIFICATE OF SERVICE [Omitted in printing]

468 [File endorsement omitted]

United States Court of Appeals
for the Seventh Circuit

[Title omitted]

ORDER CONSOLIDATING CASES—June 17, 1955

On motion of counsel for Respondent, not objected to by counsel for Petitioners.

It is ordered that the two above entitled cases be consolidated in this Court.

469 United States Court of Appeals
for the Seventh Circuit

[Title omitted]

ARGUMENT AND SUBMISSION OF CASES—September 14, 1955

Now this day come the parties by their counsel, and this cause comes on to be heard on the Original Petition for Writ of Mandamus, Answer of Respondent thereto, the briefs of counsel, and on oral argument by Mr. Jack I. Levy, counsel for petitioners, and by Mrs. James A. Sprowl, counsel for respondent, and the Court takes this matter under advisement.

470 In the United States Court of Appeals
For the Seventh Circuit

OCTOBER TERM AND SESSION, 1955

No. 11472

HOWES LEATHER COMPANY, INC. and
MONTGOMERY WARD & CO., INCORPORATED, PETITIONERS,

vs.

HONORABLE WALTER J. LA BUY, RESPONDENT

No. 11473

HOWES LEATHER COMPANY, INC., PETITIONER,

vs.

HONORABLE WALTER J. LA BUY, RESPONDENT

On Petition for a Writ of Mandamus

OPINION—October 13, 1955

Before DUFFY, *Chief Judge,* MAJOR and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge.* These causes are before us on separate petitions seeking writs of mandamus directing the Honorable Walter J. La Buy, Judge of the United States District Court, to vacate orders entered February 24, 1955, referring two related civil cases then pending before him to a master for trial.

At the outset, we are met with the contention that we have no jurisdiction to entertain these petitions, inasmuch as the pertinent orders are interlocutory in character. The argument is that the extraordinary procedures permissible under the All Writs Act, 28 U. S. C. A. § 1651, may not be
471 employed as a device for review of such orders in advance of final decision.

We see no reason to depart from our recent holding in *Chicago, R. I. & P. R. Co.* v. *Igoe,* 212 F. 2d 378, that we have the power, in extraordinary cases, to entertain a petition for a writ directing a district judge to vacate an unauthorized

interlocutory order in advance of final decision. There we relied on a series of decisions by the courts of other circuits of which *Paramount Pictures* v. *Rodney*, 186 F. 2d 111, cert. den. 340 U. S. 953 (CA-3), *Ford Motor Co.* v. *Ryan*, 182 F. 2d 329, cert. den. 340 U. S. 851 (CA-2), and *Wiren* v. *Laws*, 194 F. 2d 873 (CA-DC), are representative. All of these cases involved the question of whether mandamus would lie to review an order entered on a motion under 28 U. S. C. A., § 1404(a), to transfer a pending case to another district for trial. To this array of authorities we now add *In re Josephson*, 218 F. 2d 174 (CA-1).

Our attention is directed to *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231 (CA-1), and we are urged to reconsider the jurisdictional question in the light of that opinion. In *Narragansett*, which is the most recent of a series of decisions by the Court of Appeals for the First Circuit dealing with mandamus, the court denied leave to file a petition for a writ to compel a district judge to vacate an order referring eight related antitrust cases to a master for trial. The basis for the court's decision was its finding that "no exceptional circumstances" existed to justify invocation of mandamus jurisdiction.

As we analyze the decisions which that court has made in this series of cases, we do not believe its position is basically incompatible with our decision in the *Rock Island* case. The First Circuit recognizes that it has jurisdiction to entertain petitions for extraordinary writs directed toward review of interlocutory orders of the district courts, wherever exceptional circumstances exist which justify use of the procedure. Such is the tenor of the language employed by that court in: *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231 (CA-1); *In re Sylvania Electric Products, Inc.*, 220 F. 2d 423 (CA-1); *In re Prexin*, 204 F. 2d 417 (CA-1); *In re Chappel & Co., Inc.*, 201 F. 2d 343 (CA-1). And in *In re Josephson*, 218 F. 2d 174 (CA-1) the court did entertain a petition for the writ. There the petitioner was plaintiff in a civil action brought in Massachusetts against a New Mexico cor-
472 poration having its principal place of business in Massachusetts and the corporation's directors, all of whom were residents of that State. After process had been served, the court granted defendants' motion under 28 U. S. C. A., § 1404(a) and ordered the cause transferred to

New Mexico for trial. Josephson was granted leave to file a petition in the Court of Appeals for a writ of mandamus. In ruling on the petition, the court reviewed in some detail the history of the mandamus power in both the Supreme Court and the Courts of Appeals and reiterated its belief that the power vested in the latter is extremely limited. The court, however, concluded that it was faced with exceptional circumstances sufficient to justify exercise of the power and proceeded to a consideration of the petition on its merits.

Thus, on the naked question of power, there seems to be no disagreement between this court and that of the First Circuit. However, we differ with the able jurists of that circuit in evaluating the exceptional nature of the circumstances sufficient to endow the court with the power. Compare *Chicago, R. I. & P. R. Co.* v. *Igoe*, 220 F. 2d 299 (CA-7), with *In re Josephson*, 218 F. 2d 174, 181 (CA-1). To this extent and on this basis, we feel constrained to disagree with the decision in the *Narragansett* case. The basis for that decision is the view that if the issue as to the propriety of the interlocutory order may eventually reach the appellate tribunal by appeal after final judgment on the merits, then jurisdiction is wanting to test its propriety by mandamus in advance of a trial and final decision. Under such a view, it is immaterial whether or not any effective or adequate relief from an unauthorized order is possible by way of appeal from the final judgment.

This is a much more restricted position than that which we voiced in the *Rock Island* case, 220 F. 2d 299. Assuming the challenged orders to be beyond the governing rule, respondent's action in referring these cases to a master is, in effect, a refusal on his part, as a judge, to try the causes in due course, rather than referring them to a tribunal which is unauthorized by law. Unless we have power to decide the question of propriety of his action at this time, petitioners are faced with the necessity and great expense of protracted trials which conceivably may eventually lead nowhere but to a complete retrial of the causes before a competent tribunal. While we recognize that there is a doubtful area surrounding the dividing line between the power of this
473 court and its lack of power to issue the writ, in view of the extraordinary nature of these causes, we think that any doubt must be resolved in favor of the existence of

the power to issue the writ, if we find that the orders were beyond the court's power under the pertinent rule. See *Chicago, R. I. & P. R. Co.* v. *Igoe*, 212 F. 2d 378, 381 (CA-7); *Ford Motor Co.* v. *Ryan*, 182 F. 2d 329, 330 (CA-2).

Upon the merits of the petitions, then, we are concerned only with the question of whether the contested orders are in conformity with the provisions of Rule 53 (b) of the Federal Rules of Civil Procedure, 28 U. S. C. A.

Petitioners in No. 11472 are defendants in a civil action instituted in the court below entitled "*William Rohlfing, et al.* v. *Cat's Paw Rubber Co., et al.*," No. 50-C-229. Petitioner in No. 11473 is defendant in a similar action pending below entitled "*Norman P. Shaffer, et al.*, v. *United States Rubber Co., et al.*," No. 50-C-884. Each cause is assigned to the calendar of Judge La Buy for trial.

The averments of each petition are substantially identical, and the following statement of fact, taken from the petition in No. 11472, controls disposition of both petitions. The *Rohlfing* case, from which this action stems, was instituted by a complaint filed by 87 independent shoe repairmen against petitioners and others, praying equitable relief and damages by reason of defendants' alleged violations of the antitrust laws.

The cause came on for trial on February 23, 1955. Judge La Buy suggested that it be referred to a master for trial and, on the following day, over the objections of petitioners, entered an order of reference. The essence of the order follows: "The Court, being confronted with an extremely congested calendar, and finding that exceptional conditions exist for this reason, is of the opinion that this case can be more adequately and intelligently presented to the Court for ultimate disposition by reference to a master." On April 29, all parties to the action moved to vacate the order. These motions were denied May 6, 1955. On May 18 the parties appeared before the master, pursuant to notice, for trial of the cause. At this time all the parties presented objections to the reference. On May 20, the master ruled that the cause would proceed to trial before him; whereupon petitioners filed their petition in this court praying that a writ of mandamus issue to compel Judge La Buy to vacate
474 the order and to direct trial of the cause to proceed before the court.

The only material factual difference between No. 11472 and No. 11473 is that the *Shaffer* case (No. 11473) had not been called for hearing before the master prior to the date when the petition for writ of mandamus was filed. Under the circumstances recited in these petitions, however, the same principles and considerations are determinative of the question of the propriety of the order of reference in each case.

Rule 53(b) provides that: "A reference to a Master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it." In support of his action, respondent outlines the complexity of these cases in which the court must determine the question of liability of each of the several defendants to each of the plaintiffs and the element of accounting which must enter into the final judgment. He asserts that consideration of these factors, together with the fact that he is faced with an extremely congested calendar, brings the cases within the "exceptional condition" proviso of the Rule, and that the orders for reference constitute, therefore, an exercise of a sound discretion which this court should not disturb.

Our exact question, then, is whether the facts presented in justification of the orders of which complaint is made, as a matter of law, bring the orders of reference within the exceptional circumstances mentioned in the rule. In other words, has the district court failed to conform to the rule of civil procedure prescribed by the Supreme Court. This is a question of law dependent upon the pleaded facts. Mere error of law in a decision upon the issues presented to the court, of course, is not ground for mandamus. But if the facts upon which the judge relied in entering the order are wholly insufficient to justify nonconformance with the rule, then the action of the judge in entering the order, over the objection of all parties concerned, must be held so arbitrary and extraordinary as to justify issuance of the writ.

Measured by these tests, we do not believe respondents' position tenable. Although evidence in the nature of
475 accounts may have a substantial bearing on the issue of liability, the element of accountancy, in the sense

intended in the "account" provision of the Rule, which these cases contain can not arise until the issue of liability has been resolved. The rule refers to the subject matter of the controversy, not to the nature of the evidence which may be introduced in the course of a trial. It provides a blanket permit for reference of any accounting, see *Troyak* v. *Enos*, 204 F. 2d 536, 544-5 (CA-7), but, even as to matters of account, we agree with the belief expressed in *Barrick* v. *Pratt*, 32 F. 2d 732, 733-4 (CA-5), that a reference need not follow automatically in every case. The *Rohlfing* and *Shaffer* cases, in their present status, before trial has been had on the question of liability, are not "matters of account." Indeed, if the court finds that defendants are not liable, there will never be an accounting. The reference cannot be sustained under the "account" proviso, and the prospective accounting issues may not be relied on to prove exceptional circumstances. "This is not an accounting, but the case is exceptional because an accounting may be necessary and because some of the evidence bearing on the issue of liability may be relevant also to the issue of accounting should that prospective issue arise" is an argument which seeks to expand the positive permissive accounting proviso of the Rule to include any and all issues which may bear even a remote relationship to a question of an accounting. That, essentially, is the argument made here which we find ourselves unable to accept.

The substance of the remaining contentions is that the issues presented are complex; that the judge is confronted with a congested calendar; that reference to a master will facilitate a speedy trial and disposition of the causes, and that it cannot be said that the judge abused the discretion vested in him by the Rule in entering the orders complained of.

There is an element of discretion inherent in the last clause of the Rule, *i. e.*, the trial court must determine in each case whether "exceptional conditions" exist which will authorize a reference. When these orders are tested in the light of the interpretation placed on the Rule by the Supreme Court and the Courts of Appeals, we can only conclude that the orders complained of are beyond the permissive scope of the rule, and constitute an abuse of discretion. *Dixie Cup Co.* v. *Paper Container Mfg. Co.*, 174 F. 2d 834, 836, 837 (CA-7).

476 The reported decisions are in general agreement that

a congested calendar and the existence of complex issues do not constitute exceptional conditions warranting references to a special master. In *McCullough* v. *Cosgrove*, 309 U. S. 634, a patent case was referred to a master for trial on the trial court's recital that the judge to whom the case was assigned was ill and no other judge could be obtained, that the parties desired an early trial, that the calendar of the court was congested, and that the issues were complicated.[1] On an application for a writ of mandamus, the Supreme Court summarily directed the district judge to vacate the order of reference and directed that the case be set for trial before the District Court in due course, citing Rule 53(b) and its prior opinion in *Los Angeles Brush Corp.* v. *James*, 272 U. S. 701.

In the *James* case, the court made it plain that where the subject matter concerns enforcement of the rules which the court has formulated, mandamus may be employed to compel the district court to conform to those rules. Concerning the reference to a master, there the court commented that there was no reason why one litigant "should be subjected to any greater expense than any other litigant, except as it may be involved in the inherent and inevitable difference between the presentation of the issues as to the merit and validity of a patent grant, and that which obtains in the litigation of an ordinary bill for relief in equity, or of an action at law upon a debt or for a tort." *Los Angeles Brush Corp.* v. *James*, 272 U. S. 701, 707.

Even though in *James*, it might be thought by some that the court indulged in dictum, it seems beyond argument to

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[1] When Rule 53(e) is considered in its entirety, the weight to be accorded the factor of complex issues as bearing on an order of reference is determined by the distinction between "jury" and "non-jury" cases. With respect to the former the Rule provides for a reference "only when the issues are complicated," while in the latter a reference is proper only when "exceptional conditions" require it. Inasmuch as the framers of the Rule made complexity of the issues a ground for reference in the one instance, we think that they had reference to something more than complexity when the ground for reference in non-jury cases was defined as requiring the existence of "exceptional conditions."

us, that, in *McCullough,* the Supreme Court, by its decision, finally made the law of the land in a case where the issues were clearly drawn. 3 Fed. Rules Serv. 53b. 122, Case 1, pages 496-7, reports that an examination of the petition, the return to the order to show cause, and briefs on file
477 with the Clerk of the United States Supreme Court, discloses that, in *McCullough,* two actions by Kammerer Corporation and Baash-Ross Tool Co. against McCullough and others, filed in 1935 and 1937 respectively, and an action by McCullough against Kammerer and Baash-Ross, filed in 1938, all seeking injunction against infringement of patents, had been consolidated for trial, but continued several times because of inability to reach trial or by stipulation; that on January 15, 1940, the district judge assigned the case to a master for trial, his order reading as follows:

"These consolidated cases having been set to be tried before the Court on January 2, 1940, and the Judge before whom the cause was to be tried having been unable to try the same because of his physical condition, and all parties having expressed the desire for an early trial, and the Court having given counsel an opportunity to endeavor to secure another judge to conduct the trial; and it appearing that these cases have been pending a long time and are patent suits seeking an injunction and require a protracted trial of complicated issues; and the calendar of this Court being congested and no other judge being available to try the same within a reasonable time, the Court finds that an exceptional condition exists which requires and warrants a reference to a Master. * * *"

In the editorial comment on the case, in 3 Fed. Rules Serv. p. 722, it was said: "A recent Supreme Court decision, although summary in form, should serve as a warning against too liberal use of the power of reference." See also comment to the same effect in Encyclopedia of Federal Procedure, 2d Ed. § 3425, p. 52, and Barron & Holtzoff, Federal Practice and Procedure, Rules Ed., § 1163, p. 872-873.

It seems clear, therefore, by its decision in the *McCullough* case, the Supreme Court depended upon the doctrine it had announced in James. If it was improper for the district judge in *McCullough* to refer to two causes to a master, so it seems beyond question that the order of the district court

in the present cases was likewise improper and beyond the court's legal power under the rule forbidding references.

In *United States* v. *Kirkpatrick*, 186 F. 2d 393 (CA-3), an admiralty case was referred to a commissioner for trial to relieve a congested docket including a backlog of
478 admiralty controversies, the order reciting the long pendency of the affected case, the desire of the parties for an early trial and a shortage of judges to facilitate an early disposition of the case. The Court of Appeals construed the language of Admiralty Rule 43 permitting a reference "where the court * * * deems it necessary for the purpose of justice" and the "exceptional condition" provision of Rule 53(b) as being *in pari materia*, requiring the existence of exceptional circumstances to warrant a reference to a master. The court held that the factors recited above did not constitute exceptional circumstances and issued a writ of mandamus directing the lower court to vacate its order referring the case to a commissioner, citing the *McCullough* case and *Adventures in Good Eating* v. *Best Places to Eat*, 131 F. 2d 809 (CA-7).

In *McClellan* v. *Carland*, 217 U. S. 268, the court held that mandamus to require a trial court to proceed with and determine a pending suit might issue by a court of appeals in aid of its appellate jurisdiction. This was reiterated in *Ex parte United States*, 287 U. S. 241, at 246, where the court held that a trial judge had no power to refuse to issue a bench warrant, as it was not a matter of discretion, but a mandatory duty to issue the warrant.

In *Ex parte Skinner & Eddy Corp.*, 265 U. S. 86, the Supreme Court issued a writ requiring the Court of Claims to set aside an order reinstating a cause which it had dismissed. The court said, at page 95: "It only remains to inquire whether this is a proper case for the writ asked. Mandamus is an extraordinary remedial process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. Although classed as a legal remedy, in issuing it a court must be largely controlled by equitable principles. *Duncan Townsite Co.* v. *Lane*, 245 U. S. 308, 312; *Arant* v. *Lane*, 249 U. S. 367, 371. It would be a useless waste of time and effort to enforce a trial in the Court of Claims if we were, upon appeal, to find that the petitioner was unjustly

cuit, and have requested that your respondent file a motion praying that this case be considered *en banc* by this Court.

Respectfully submitted,

WALTER J. LA BUY, *Respondent*.
By EDWARD R. JOHNSTON
JAMES A. SPROWL
EDWARD H. HATTON
His Attorneys

Dated this 4th day of November, A.D., 1955

499 [File endorsement omitted]

In the United States Court of Appeals
for the Seventh Circuit

[Title omitted]

ANSWER TO PETITION FOR REHEARING OR RECONSIDERATION BY THE COURT *en banc*—Filed November 15, 1955

1. The petition concedes that no point was "overlooked or misapprehended" by this court.

2. The petition is therefore based on the speculation that a different panel of judges might produce a different result.

3. No reason is stated in the petition for the delay in filing it (rule 22). Although the statute (28 U. S. C. A. 46) provides for "a hearing or rehearing" by the court *en banc*, no such suggestion was made by respondent at any prior stage of the proceedings; for example, when

a) respondent moved to advance the case;

b) respondent moved to stay the issuance of the writ of mandamus "pending the application for a writ of certiorari.".

500 4. The fact that this is a mandamus proceeding in which a district judge is respondent, does not require consideration by the court *en banc*. *Dairy Industries Supply Ass'n.* v. *La Buy*, 212 F. 2d 378.

5. Other litigants, including the federal government, have been denied rehearing by the court *en banc*. *Bull v. Sun*

Life Assurance Co., 141 F. 2d 456 (#8369); *U.S.A. v. The Shotwell Mfg. Co.*, . . . F. 2d . . . (#11108) and related cases.

6. The fact that the decision of this case was not unanimous does not require reconsideration by the court *en banc*. *Bull* and *Shotwell* cases, *supra*.

7. Respondent states that his colleagues "have uniformly expressed concern and suggested that a decision so important to the administration of justice in this Circuit should be reached only upon a decision of all of the judges of the Court of Appeals."

If this means that the district judges fear that this decision might hamper the administration of justice, it should be recalled that

a) This decision does not prevent references to masters. Jury cases can be referred where the issues are "complicated." Masters of account can be referred within the limits prescribed by this court. Non-jury cases can be referred upon a showing that an "exceptional condition" requires the reference.

b) This decision does not effect any change in the law. All trial judges have long been apprised, by the language of the rule and by authoritative decisions, of the law reiterated by the majority opinion in this case.

501-502 Petitioners pray that respondent's petition for rehearing or reconsideration by the court *en banc* be denied.

HOWES LEATHER COMPANY, INC.
By ——— ———
One of its attorneys
MONTGOMERY WARD & CO., INCORPORATED
By its attorneys:
CHARLES J. BARNHILL
DAVID L. DICKSON
JOHN F. McCLURE

Of Counsel

for HOWES LEATHER COMPANY, INC.:
JAMES M. GOFF
SONNENSCHEIN BERKSON LAUTMANN LEVISON & MORSE

503 United States Court of Appeals
for the Seventh Circuit

No. 11472

HOWES LEATHER COMPANY, INC., AND MONTGOMERY WARD & CO., INC., PETITIONERS,

vs.

HONORABLE WALTER J. LA BUY, RESPONDENT

No. 11473

HOWES LEATHER COMPANY, INC., PETITIONER

vs.

HONORABLE WALTER J. LA BUY, RESPONDENT

ORDER DENYING PETITION FOR REHEARING, ETC.—
November 17, 1955

Respondent having petitioned for a rehearing *en banc* and said petition having been referred to all Judges of this Court, who have now indicated their views as to whether said petition should be granted, and a majority of the Circuit Judges of this Circuit who are in active service, having voted that said petition be denied,

IT IS ORDERED, that the petition of respondent for a rehearing *en banc*, be and the same is hereby denied.

Respondent having petitioned for a rehearing by the panel of Judges which heard and decided said cases, and a majority of said panel having voted to deny said petition,

IT IS ORDERED, that the petition of respondent for a rehearing, be and the same is hereby denied.

504 [File endorsement omitted]

In the United States Court of Appeals
for the Seventh Circuit

[Title omitted]

MOTION TO STAY ISSUANCE OF WRITS OF MANDAMUS—
Filed November 25, 1955

Comes now The Honorable Walter J. La Buy, by E. R. Johnston, James A. Sprowl and Edward H. Hatton, his attorneys, and respectfully moves this Court as follows:

1. Under date of October 13, 1955, this Court issued its opinion and order directing that the writ of mandamus issue "directing respondent to vacate the order of reference and directing that a trial of each cause be had in due course before the District Court".

2. On October 24, 1955, the respondent in the above consolidated causes filed a motion to stay issuance of writ of mandamus, and this motion was granted by this Honorable Court in October 25, 1955.

3. On November 4, 1955, the respondent in the
505 above consolidated causes filed a petition for rehearing or reconsideration by the Court of Appeals *en banc*. The petition for rehearing or reconsideration by the Court of Appeals *en banc* was denied by this Court on November 17, 1955.

4. The respondent therefore respectfully requests this Court for a stay of the issuance of the writ of mandamus in each of the above consolidated causes pending application for writ of certiorari in the Supreme Court of the United States pursuant to Rule 25 of the Rules of this Court.

THE HONORABLE WALTER J. LABUY,
Respondent
By EDWARD R. JOHNSTON
JAMES A. SPROWL
EDWARD H. HATTON
His Attorneys

Dated this 23rd day of November, 1955

506-507 AFFIDAVIT OF MAILING (omitted in printing)

508 United States Court of Appeals
for the Seventh Circuit

[Title omitted]

ORDER STAYING ISSUANCE OF WRITS OF MANDAMUS—
November 25, 1955

On consideration of the Motion of counsel for Respondent,

It is ordered that the issuance of the Writ for Mandamus in the above entitled causes be stayed pending the Petition for Writ of Certiorari to be filed in the Supreme Court of the United States, said stay to be for thirty days and pursuant to the provisions of Rule 25 of the Rules of this Court.

509 [File endorsement omitted]

In the United States Court of Appeals
for the Seventh Circuit

[Title omitted]

MOTION TO STAY ISSUANCE OF WRITS OF MANDAMUS—
Filed December 23, 1955

Comes now The Honorable Walter J. La Buy, by E. R. Johnston, James A. Sprowl, and Edward H. Hatton, his attorneys, and respectfully moves this Court as follows:

1. Under date of October 13, 1955, this Court issued its opinion and order directing that the Writ of Mandamus issue "directing respondent to vacate the Order of Reference and directing that a trial of each cause be had in due course before the District Court".

2. On October 24, 1955, the respondent in the above consolidated causes filed a motion to stay the issuance of the writ of mandamus, and this motion was granted by this Honorable Court on October 25, 1955.

3. On November 4, 1955, respondent in the above consolidated causes filed a petition for rehearing or reconsideration by the Court of Appeals *en banc*. The petition for rehearing or reconsideration by the Court of Appeals *en banc*
510 was denied by this Court on November 17, 1955.

4. On November 24, 1955, respondent in the above consolidated causes filed a motion to stay the issuance of the

writ of mandamus, and this motion was granted by this Honorable Court on November 25, 1955.

5. Respondent therefore respectfully requests this Court to stay the issuance of the writ of mandamus up to and including January 11, 1956, in each of the above consolidated causes, pending application for writ of certiorari in the Supreme Court of the United States, pursuant to Rule 25 of the Rules of this Court.

THE HONORABLE WALTER J. LA BUY,
Respondent
By EDWARD R. JOHNSTON
JAMES A. SPROWL
EDWARD H. HATTON
His Attorneys

Dated this 23rd day of December, 1955

511-512 AFFIDAVIT OF SERVICE (omitted in printing)

513 United States Court of Appeals
for the Seventh Circuit
Chicago 10, Illinois

[Title omitted]

ORDER STAYING ISSUANCE OF WRIT OF MANDAMUS—
December 23, 1955

On consideration of the Motion of counsel for Respondent,

It is ordered that the issuance of the Writ of Mandamus in the above entitled causes be stayed up to and including January 11, 1956 pending application for writ of certiorari in the Supreme Court of the United States, pursuant to Rule 25 of the Rules of this Court.

514 SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 27, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1956 386023 1370

Office - Supreme Court, U. S.
FILED
JAN 11 1956
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 622 [illegible]

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC. and
MONTGOMERY WARD & CO., INC.,
Respondents.

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
Attorneys for Petitioner.

JOHNSTON, THOMPSON, RAYMOND, MAYER & JENNER,
Of Counsel.

The Scheffer Press, Inc.—ANdover 3-6850

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III. In Commanding the District Court to Vacate the Orders of Reference, the Court of Appeals in effect nullified Rule 53(b) of the Federal Rules of Civil Procedure which Authorizes References Where Some "Exceptional Condition" Requires It, and Thereby Decided a Federal Question of General Importance Which Should be Reviewed by This Court. 14

CONCLUSION 17

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955.

No.

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC. and
MONTGOMERY WARD & CO., INC.,
Respondents.

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, the Honorable Walter J. LaBuy, a Judge of the United States District Court for the Northern District of Illinois, Eastern Division, prays that a writ of certiorari issue to review a decision of the United States Court of Appeals for the Seventh Circuit entered on October 13, 1955, directing the issuance of a writ of mandamus requiring petitioner to revoke two orders of reference entered by him.[1]

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[1] This petition concerns two applications for writs of mandamus filed in the Court below in companion cases. The Court below ordered the two cases consolidated, and they are accordingly before this Court as a consolidated case.

Opinion Below.

The order sought to be reviewed was entered in an original proceeding for *mandamus* filed in the Court of Appeals. The opinion of the Court majority, as well as that of the dissenting Judge, appears in the appendix to this petition and is also reported in 226 F. 2d 703.

Jurisdiction.

The order of the Court of Appeals was entered on October 13, 1955. A petition for rehearing and for rehearing *en banc* was denied on November 17, 1955. The jurisdiction of this Court is invoked pursuant to 28 USC 1254.

Questions Presented.

1. Whether the "All Writs Act" (28 USC 1651(a)) confers jurisdiction upon the Courts of Appeal to review by writ of mandamus a District Court's interlocutory and discretionary order of reference to a Master in Chancery.

2. Whether the issuance of a writ of mandamus is proper under the "All Writs Act" to revoke and annul an order of reference entered by a District Court acting within its jurisdiction merely because the majority of the Court of Appeals concluded the reference to be erroneous under Rule 53 (b) of the Federal Rules of Civil Procedure.

3. Whether the referral of a non-jury case to a Master for trial which the District Court found was necessitated by the unusual complexity of the factual and legal issues, by the length of time required to hear and determine such case, by the matters of account inherent in resolving the issues of liability, and by the extreme congestion of his trial calendar, was authorized by Rule 53 (b) of the Federal Rules of Civil Procedure.

Statute and Rule Involved.

The pertinent provision of the "All Writs Act" (28 USC 1651(a)) reads as follows:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Rule 53 (b) of the Federal Rules of Civil Procedure reads as follows:

> "(b) *Reference.* A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it."

STATEMENT OF THE CASE.

1.

The Nature of the Case.

The two consolidated cases made the subject matter of this petition find their genesis in two original petitions for writs of mandamus filed with the Court of Appeals for the Seventh Circuit. The moving parties in No. 11472 in the Court of Appeals (*Howes Leather Co., Inc.* and *Montgomery Ward & Co., Inc.* v. *The Hon. Walter J. LaBuy*) were two of multiple defendants in a case pending before the respondent District Judge (*Rohlfing, et al* v. *Cats Paw Rubber Co.*, No. 50 C 229, N. D. Ill., E. D.) which had been referred to a Master in Chancery for trial. The moving party in No. 11473 in the Court of Appeals (*Howes Leather Co., Inc.* v. *The Hon. Walter J. LaBuy*) was one of multiple defendants

in a companion case also pending before the same District Judge (*Shaffer, et al* v. *U. S. Rubber Co., et al,* No. 50 C 844, N. D. Ill., E. D.) which had been similarly referred to a Master for trial at the same time as its companion case. The two petitions for mandamus, without the assertion of any grounds to sustain them, asked the Court of Appeals to vacate the orders of reference previously entered in the two cases pending before the District Judge. The answers filed in response to the mandamus applications recited in factual detail the reasons impelling the Court to refer the cases to a Master for trial. The enumerated reasons were not challenged by the petitioners below, and the Court of Appeals similarly accepted them.

2.

The Referrals to the Master.

Both *Rohlfing, et al* v. *Cats Paw Rubber, et al,* and its companion case of *Shaffer, et al* v. *U. S. Rubber Co., et al,* were filed in 1950. There were originally eighty-seven plaintiffs (independent shoe repairmen) in *Rohlfing,* with twenty-five defendants (manufacturers and wholesalers of rubber goods, leather goods, and shoe polish, as well as department and chain store distributors). The *Shaffer* case was instituted by ten wholesalers of shoe repair articles against twenty defendant manufacturers and wholesalers of shoe repair materials and related items.

The complaints in both suits alleged conspiracies to violate Sections 1 and 2 of the Sherman Anti-Trust Act, and described the impact of the asserted conspiracies on the plaintiffs. A conspiracy to violate Section 3 of the Robinson-Patman Act was similarly advanced. The complaints as amended also contained separate counts (104

in *Rohlfing* and 20 in *Shaffer*) alleging individual violations of Section 2(a) of the Robinson-Patman Act and asserted damages to each of the plaintiffs in the two suits.

During the pendency of the suits a prolix series of motions were considered by the Court, and lengthy discovery proceedings were instituted. On February 23, 1955, both cases were called before the District Court on the plaintiffs' motion to reset them for trial to May, 1955 to permit the taking of further depositions. At that time the Court advised the parties of his congested calendar, suggested the possibility of referring the cases to a Master to expedite their trial, and advised counsel to appear in his chambers the following morning. At that time he outlined the reasons which he felt necessitated the referrals to a Master in Chancery, and on that day entered the orders of reference. The Master set both cases for hearings on May 2, 1955 to permit the plaintiffs to finish the taking of certain depositions. Just before the hearings before the Master were to commence, an oral motion was made to revoke the orders of reference. After consideration by the Court, this oral motion was denied. The petitions for a writ of mandamus were filed shortly thereafter.

3.

Reasons for the Referral.

The answers filed by the Trial Judge in response to the petitions for a writ of mandamus succinctly set forth the facts and reasons which impelled him to order the referrals. The considerations moving the Court to order the referrals were not challenged by the Court of Appeals, and may be summarized as follows:

1. The cases are complicated and complex, involving multiple plaintiffs and defendants, and place in issue difficult questions of law and fact concerning claims of violations of Sections 1 and 2 of the Sherman Act, and Sections 2 and 3 of the Robinson-Patman Act;

2. The cases also will require detailed accounting analysis, including the examination of a very large number of transactions;

3. The insistent demands of the parties for an early trial date on the completion of pre-trial discovery;

4. The congested nature of the Court's calendar, which foreclosed the demands of the parties for an expeditious trial before the Court;

5. The lengthy and protracted period of time necessary for the actual trial of the cases; and

6. The time necessary to sift and analyze the evidence, and prepare an opinion in the cases.

As stated in the District Judge's answer, it appeared to him that all of the considerations together amounted to exceptional and unusual circumstances within the meaning of Rule 53 (b) of the Federal Rules of Civil Procedure, justifying and authorizing the referrals.

4.

The Decision of the Court of Appeals.

The majority of the Court of Appeals (per Judge Lindley) first found jurisdiction and power under the All Writs Act to entertain the petitions for a writ of mandamus. The opinion stated its disagreement with a prior and directly conflicting decision of the First Circuit in the case of *In re Narragansett Pier Amusement Corp.*,

224 F. 2d 231 (CA 1, 1955) *cert. den.*, 76 S. Ct. 103. The Court, although giving full weight and credence to the reasons impelling the Trial Judge to order the referrals, determined that these reasons did not meet the requirements of Rule 53 (b) of the Federal Rules, and concluded that the Trial Court's order was thus "erroneous" and constituted an "abuse of discretion". The majority relied primarily on a *per curiam* decision by this Court in *McCullough* v. *Cosgrave*, 309 U.S. 634 (1940), in holding the references to have been erroneous.

Judge Major, in dissenting, agreed that the Court had power to act, but in the exercise of its sound discretion should not grant the writs. He viewed the controlling decisions of this Court as precluding the issuance of a writ of mandamus to correct in advance of final decision, an interlocutory order of a District Court thought to be erroneous by the Court of Appeals. On the merits, he would have sustained the orders of reference. He disagreed with the majority's interpretation of the *per curiam* decision by this Court in *McCullough* and observed that the Supreme Court "will sooner or later be called upon to repudiate" what he considered to be the misinterpretation placed on that case. He concluded by stating that the effect of the majority's opinion is to judicially repeal and nullify Rule 53 (b), and that "If reference is to be outlawed it should be by legislation or Supreme Court rule rather than by decision of this Court."

REASONS FOR GRANTING THE WRIT.

I.

The Holding of the Court of Appeals That the All Writs Act Confers Power upon It to Review by Writ of Mandamus a District Court's Interlocutory and Discretionary Order of Reference Is in Direct Conflict with a Prior Decision of the Court of Appeals for the First Circuit.

The Court below determined that it had authority under the All Writs Act to entertain a petition for writ of mandamus to revoke the order of reference entered by the Trial Court. In so holding, the Court below reached a decision directly in conflict with the prior opinion of the Court of Appeals for the First Circuit in the case of *In re Narragansett Pier Amusement Co.*, 224 F. 2d 231 (CA 1, 1955), cert. den., 76 S. Ct. 103.

In *Narragansett,* a petition for leave to file a writ of mandamus with the First Circuit was requested. The petitioners there sought to revoke orders of reference entered by the Trial Court in a series of anti-trust cases pending before that Court. The First Circuit refused leave to file, asserting that this was not the kind or type of case in which its jurisdiction could be invoked under the All Writs Act. The majority of the Court of Appeals for the Seventh Circuit recognized this conflict when it said:

> ". . . To this extent and on this basis, we feel constrained to disagree with the decision in the Narragansett case. The basis for that decision is in the view that if the issue as to the propriety of the interlocutory order may eventually reach the appellate tribunal by appeal after final judgment on the merits, then jurisdiction is wanting to test its propriety by mandamus in advance of a trial and final decision."

II.

The Extreme Diversity of Views Expressed by the Courts of Appeal Construing the All Writs Act, Coupled with the Far Reaching Consequences of the Holding of the Court of Appeals in the Case at Bar, Call for Review by This Court to Define and Delineate the Extent of Power and Authority Granted to the Courts of Appeals by the All Writs Act.

A.

The Diversity of Views Expressed by the Courts of Appeal Interpreting and Applying the All Writs Act.

A review of the decisions by the Courts of Appeal construing and applying the All Writs Act discloses the widest range and diversity of opinion as to the scope of the power and authority conferred by that Act on the Courts of Appeal.

The First Circuit has refused to construe the "All Writs Act" as conferring a "roving commission" upon it to supervise interlocutory orders of District Courts in advance of final decision. It has thus consistently refused to intercede in any instance where the challenged interlocutory order would not impair its potential appellate jurisdiction.

It has construed the All Writs Act as affording it authority to review a transfer order under 28 USC 1404(a) transferring a cause to another Circuit, but not with authority to review a refusal to transfer. See *e.g., In re Josephson,* 218 F. 2d 174 (CA 1, 1954). It has by the same reasoning refused to intervene by way of a writ of mandamus where the Trial Judge refused to transfer a case to the non-jury calendar (*In re Chappell & Co.,* 201 F. 2d 343); where the Trial Court refused to grant a motion for a jury trial (*In re Previn,* 204 F. 2d 417); or where the lower Court had permitted the substitution of a

party plaintiff (*In re Sylvania Electric Products*, 220 F. 2d 423).

The Eighth Circuit has adhered to the construction of the All Writs Act followed by the First Circuit. See *e.g.*, *Carr* v. *Donohoe*, 201 F. 2d 426 (CA 8, 1953) (refusal to review order transferring case to another district within the same Circuit); *Hydraulic Press Manufacturing Co.* v. *Moore*, 185 F. 2d 800 (CA 8, 1950) (refusal to review order denying motion to quash return of service).

Decisions by other Circuits do not follow the consistent pattern pursued by the First and Eighth Circuits. The Third Circuit, in *Canister Co.* v. *Leahy*, 191 F. 2d 255, issued a writ of mandamus directing the Trial Court to grant a jury trial to the petitioner. This assumption of power is in direct conflict with the position of the First Circuit (*In re Previn*, 204 F. 2d 417) and also is in conflict with the decision by the Eighth Circuit in *Petsel* v. *Riley*, 192 F. 2d (CA 8, 1951). Although the Third Circuit granted mandamus in *Canister Co.* v. *Leahy*, *supra*, it has denied a petition for such relief in the attempted review of a Trial Court's refusal to dismiss a complaint (*American Airlines* v. *Forman*, 204 F. 2d 230), and also where a Trial Court order to produce documents was challenged (*Pennsylvania R.R. Co.* v. *Kirkpatrick*, 203 F. 2d 149). In the latter two cases the Third Circuit used language and reasoning closely paralleling the reasons advanced by the First and Eighth Circuits in support of their construction of the All Writs Act.

The Second Circuit first refused to entertain writs of mandamus in transfer cases under 28 USC 1404(a). In *Magnetic Engineering Co.* v. *Dings Mfg. Co.*, 178 F. 2d 866 (CA 2, 1950), Judge Learned Hand reasoned that the All Writs Act did not authorize a review where the transfer was

to another Federal District Court, but came into play only where there was a remand from a Federal Court to a State Court which threatened to terminate all federal jurisdiction. However, in *Ford Motor Co.* v. *Ryan*, 182 F. 2d 329 (CA 2, 1950), where the refusal of the District Court to grant a transfer to another Circuit was in issue, the Court held it had jurisdiction to review this refusal under the All Writs Act. The trilogy became complete in the recent case of *Tores* v. *Walsh*, 221 F. 2d 319 (CA 2, 1955), in which the Court refused to issue a writ of mandamus where a transfer had been granted. The apparent conclusion to be drawn from these cases is that the Second Circuit will review by mandamus where the District Court refuses to enter a transfer, but will normally not entertain a petition for mandamus where a transfer order has been granted.

The Fifth Circuit has refused to entertain a writ to revoke a transfer order under 28 USC 1404(a). *Ex Parte Pfizer & Co.*, 225 F. 2d 720 (CA 5, 1955). The Court noted the diversity of opinion as to the proper application of the All Writs Act, and adopted a middle of the road approach, finding that the Trial Court had considered all "necessary facts and factors", and that there was no "clear abuse of discretion" shown.

The Ninth Circuit finds authority in the All Writs Act to review an order transferring a case within the Circuit but from one district to another. *Shapiro* v. *Bonanza Hotel Co.*, 185 F. 2d 777 (CA 9, 1950). This holding is in direct conflict with the refusal of the Eighth Circuit to entertain a writ to review a transfer within the Circuit. *Carr* v. *Donohoe*, 201 F. 2d 426 (CA 8, 1953).

The Seventh Circuit, as is reflected in the case at bar, interprets the All Writs Act as giving it the widest latitude

in reviewing otherwise unappealable interlocutory orders entered by a District Judge. This Circuit has adhered to the view that the All Writs Act confers power upon it to act whenever it is shown that a Trial Court has abused its discretion or arrived at what the Court believes to be an erroneous decision. See *e.g., Chicago Rock Island R. Co.* v. *Igoe,* 220 F. 2d 299 (CA 7, 1955); *Goldberg* v. *Hoffman,* 226 F. 2d 680, 682 (CA 7, 1955).

The diversity of opinion expressed by the Courts of Appeal interpreting and applying the All Writs Act calls for the exercise by this Court of its supervisory powers to settle the conflicts that have arisen and which have multiplied.[2] The conflict in principle between the decision of the Seventh Circuit in the instant case and the decisions of the First and Eighth Circuits are compellingly clear. A granting of this petition will afford the Court the opportunity to dispel the conflict of views between the circuits as to the content and limits of jurisdiction conferred by the All Writs Act.

B.

The Court Below Has Decided a Federal Question Which Conflicts in Principle with Applicable Decisions of This Court.

Congress has stated that piece-meal review shall be avoided even though this necessarily may occasion some unavoidable delays and expense to the litigants involved (28 USC 1291, 1292). The decision of the Court of Appeals in the instant case clearly frustrates this legislative policy by judicially amending the All Writs Act so as to confer authority on Courts of Appeal to review any interlocutory orders which they may consider erroneous.

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[2] See note, 52 Michigan L. Rev. 1065, 1066 (1954) where the author comments as follows: "Judicial interpretation of the phrase 'in aid of their respective jurisdiction' has been so inconsistent that the cases would seem to be irreconcilable".

This holding of the Court of Appeals conflicts in principle with prior decisions of this Court that the traditional office of a writ of mandamus cannot be enlarged to control the decisions of trial courts, but rather should be employed "in its traditional function of confining a Court to its prescribed jurisdiction". *Bankers Life and Casualty Co.* v. *Holland,* 346 US 379 (1953). The conflict in principle extends not only to the *Bankers Life* case, but also to the prior decision of this Court in *Roche* v. *Evaporated Milk Association,* 319 US 341 (1943).

In the foregoing cases this Court has carefully reiterated the rule that extraordinary writs will not be entertained merely to review an interlocutory order entered by a lower Court where that Court had jurisdiction to hear and decide the issue presented for determination. As this Court stated in *Bankers Life and Casualty Co.* v. *Holland,* 346 US 379, 382-3 (1953):

> "If we apply the reasoning advanced by the petitioner, then every interlocutory order which is wrong might be reviewed under the All Writs Act."

The philosophy underlying the decisions by this Court is reflected and applied in the decisions of the First and Eighth Circuits heretofore reviewed (Pet. pp. 9 to 12, *supra*). The dissenting Judge in the case at bar was of a similar view and expressed himself as follows:

> "The majority opinion asserts that respondent in entering the order of reference abused his discretion. No reason is assigned, however, for such holding other than that respondent made an erroneous ruling. But that is not sufficient, as is shown by statements from *Roche* and *Bankers Life, supra,* . . . In my opinion, there was no abuse of discretion by respondent, but the issuance of the writ will constitute an abuse of discretion by this Court. The shoe is to be placed on the wrong foot."

The decision of the Court of Appeals thus conflicts in principle with prior and controlling decisions of this Court and conflicts as well with decisions of the First and Eighth Circuits. It is respectfully submitted that the Court of Appeals has erroneously decided questions of critical importance to the federal courts, amply meriting review by this Court in the exercise of its supervisory powers over the federal courts.

III.

In Commanding the District Court to Vacate the Order of Reference, the Court of Appeals in Effect Nullified Rule 53(b) of the Federal Rules of Civil Procedure, Which Authorizes References Where Some "Exceptional Condition" Requires it, and Thereby Decided an Important Question of Federal Law Which Should be Reviewed by This Court.

The effect of the decision of the majority of the Court of Appeals is virtually to nullify Rule 53(b), and outlaw all references in non-jury cases, except for "* * * matters of account * * *." While recognizing that *jury* cases may be referred "* * * when the issues are complicated * * *," the Court below held that this was never a sufficient reason for referring a non-jury case. This holding is plainly contrary to the historic development of references in chancery, and is based on the incomprehensible conclusion that under Rule 53(b), the right to refer a non-jury case is actually narrower than the right to refer a jury case.

Furthermore, the Court below has wholly usurped the discretion conferred by Rule 53(b) on the District Judges to determine whether "exceptional conditions" necessitate a reference. The purpose and effect of the decision is to foreclose all references in non-jury cases except for "matters of account * * *," or where all of the parties agree to the reference. Whatever are "* * * exceptional

conditions * * *" justifying a reference, we are confident that unanimous agreement of the parties was never intended by the rule makers to be an absolute essential.

The Court of Appeals reached this result because of its own interpretation of this Court's short *per curiam* opinion in the case of *McCullough* v. *Cosgrave,* 309 U. S. 634 (1940). This Court did not explain its action in awarding the writ of mandamus in the *McCullough* case, except to refer to the earlier case of *Los Angeles Brush Corp.* v. *James,* 272 U. S. 70 (1926). Considering the actual record in the *McCullough* case and the opinion in the earlier case referred to, this Court must have determined only that it was a flagrant violation of the rule for a trial court to decide in advance that all cases of a certain class (*i.e.,* as all patent cases) sould be referred to a master.

Nothing of that sort is involved in the two references now before the Court. These cases were referred because of their own peculiarities; indeed this record shows that the Petitioner, Judge La Buy, over the last six years, has referred only nine cases to any master in chancery. The trial court, in the case at bar, entered the orders of reference only after a careful consideration of the various factors underlying his decision. He made, in substance, the judicial determination required of him by Rule 53(b) in deciding that exceptional circumstances sustained and necessitated the references. Certainly where, as here, the cases are unusually complicated because of the great number of counts, parties and theories of recovery; where the bulk of the evidence will consist of numberless accounting records of past sales which must be tediously received and examined to determine whether liability for price discrimination exists; where the cases will take months to try; and where the trial Court's calendar is abnormally

congested (largely because petitioner recently spent nearly one entire court year trying and deciding *United States* v. *DuPont*, Ans. par. 16), the trial judge should not be found to have abused the discretion conferred upon him by the Rule, in making the reference. In fact, such cases may well constitute "matters of account" embraced by Rule 53(b).

The majority below construed *McCullough* as standing for the proposition that a congestion of a trial calendar and complexity of the case is never enough to justify referral to a Master in Chancery. The dissenting Judge construed this opinion as holding that District Judges could not by rule or agreement refer all of a certain class of cases (in *McCullough* all patent infringement suits) to masters in chancery for trial, for such would represent an abdication of judicial judgment and discretion required by the Rule. The dissenting Judge also pointed to the decision by this Court in *Roche* v. *Evaporated Milk Association*, 319 US 21, 31 (1943), as substantiating his construction of the *McCullough* case. ("Hence there are in this case no special circumstances which would justify the issuance of the writ such as a *persistent disregard of the Rules of Civil Procedure*, . . . found in *McCullough* v. *Cosgrave*, 309 US 634, . . .") (Emphasis supplied).

The diversity of opinion as to the proper meaning and interpretation of the *per curiam* decision by this Court in *McCullough* v. *Cosgrave* is found in the commentaries on the case (See *e.g.*, 3 Federal Rules Service 496-7; Stern and Gressman "Supreme Court Practice", 263-264), as well as in the few decisions construing and applying Rule 53 (b). See *e.g.*, *United States* v. *Kirkpatrick*, 186 F. 2d 393 (CA 3, 1950); *Seib Hatcheries* v. *Lindley*, 13 FRD 113 (WD Ark, 1952).

Since the courts, as was aptly stated by Mr. Justice Brandeis in *Ex Parte Peterson*, 253 U. S. 300, 312-13 (1920) (in sustaining a reference to a master in a jury case) have "* * * inherent power to provide themselves with appropriate instruments required for the performance of their duties," this Court should now give an appropriate and authoritative construction to Rule 53(b) for the guidance of the lower courts—a construction broad enough to permit the trial courts to get their work done. It should not be a nullifying interpretation. Furthermore, the conflicting interpretations placed on the *per curiam* decision by this Court in *McCullough* v. *Cosgrave* has resulted in confusion as to the proper interpretation of Rule 53(b), as is vividly illustrated by the majority and dissenting opinions in the cases at bar.

It is therefore respectfully submitted that the importance of a definitive interpretation of Rule 53(b) as a guide to the Federal District and Circuit Courts falls well within the standards heretofore enunciated by this Court in determining whether a case merits review through a writ of certiorari.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted.

THE HONORABLE WALTER J. LA BUY,
United States District Judge

By EDWARD R. JOHNSTON
JAMES A. SPROWL
EDWARD H. HATTON
His Attorneys

JOHNSTON, THOMPSON, RAYMOND, MAYER & JENNER
11 South LaSalle Street
Chicago 3, Illinois
Of Counsel

APPENDIX.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

OCTOBER TERM AND SESSION, 1955.

No. 11472
HOWES LEATHER COMPANY, INC. and MONTGOMERY WARD & CO., INCORPORATED,
Petitioners,
vs.
HONORABLE WALTER J. LA BUY,
Respondent,

No. 11473
HOWES LEATHER COMPANY, INC.,
Petitioner,
vs.
HONORABLE WALTER J. LA BUY,
Respondent,

On Petition for a Writ of Mandamus

October 13, 1955.

Before DUFFY, *Chief Judge*, MAJOR and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge.* These causes are before us on seaprate petitions seeking writs of mandamus directing the Honorable Walter J. La Buy, Judge of the United States

District Court, to vacate orders entered February 24, 1955, referring two related civil cases then pending before him to a master for trial.

At the outset, we are met with the contention that we have no jurisdiction to entertain these petitions, inasmuch as the pertinent orders are interlocutory in character. The argument is that the extraordinary procedures permissible under the All Writs Act, 28 U.S.C.9. § 1651, may not be employed as a device for review of such orders in advance of final decision.

We see no reason to depart from our recent holding in *Chicago, R. I. & P. R. Co.* v. *Igoe,* 212 F. 2d 378, that we have the power, in extraordinary cases, to entertain a petition for a writ directing a district judge to vacate an unauthorized interlocutory order in advance of final decision. There we relied on a series of decisions by the courts of other circuits of which *Paramount Pictures* v. *Rodney,* 186 F. 2d 111, cert. den. 340 U. S. 953 (CA-3), *Ford Motor Co.* v. *Ryan,* 182 F. 2d 329, cert. den. 340 U.S. 851 (CA-2), and *Wiren* v. *Laws,* 194 F. 2d 873 (CA-DC), are representative. All of these cases involved the question of whether mandamus would lie to review an order entered on a motion under 28 U. S. C. A., § 1404(a), to transfer a pending case to another district for trial. To this array of authorities we now add *In re Josephson,* 218 F. 2d 174 (CA-1).

Our attention is directed to *In re Narragansett Pier Amusement Corp.,* 224 F. 2d 231 (CA-1), and we are urged to reconsider the jurisdictional question in the light of that opinion. In *Narragansett,* which is the most recent of a series of decisions by the Court of Appeals for the First Circuit dealing with mandamus, the court denied leave to file a petition for a writ to compel a district judge to vacate an order referring eight related antitrust cases to a master for trial. The basis for the court's decision was its finding that "no exceptional circumstances" existed to justify invocation of mandamus jurisdiction.

As we analyze the decisions which that court has made in this series of cases, we do not believe its position is

basically incompatible with our decision in the *Rock Island* case. The First Circuit recognizes that it has jurisdiction to entertain petitions for extraordinary writs directed toward review of interlocutory orders of the district courts, wherever exceptional circumstances exist which justify use of the procedure. Such is the tenor of the language employed by that court, in: *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231 (CA-1); *In re Sylvania Electric Products, Inc.*, 220 F. 2d 423 (CA-1); *In re Previn*, 204 F. 2d 417 (CA-1); *In re Chappell & Co., Inc.*, 201 F. 2d 343 (CA-1). And in *In re Josephson*, 218 F. 2d 174 (CA-1) the court did entertain a petition for the writ. There the petitioner was plaintiff in a civil action brought in Massachusetts against a New Mexico corporation having its principal place of business in Massachusetts and the corporation's directors, all of whom were residents of that State. After process had been served, the court granted defendant's motion under 28 U. S. C. A., § 1404 (a) and ordered the cause transferred to New Mexico for trial. Josephson was granted leave to file a petition in the Court of Appeals for a writ of mandamus. In ruling on the petition, the court reviewed in some detail the history of the mandamus power in both the Supreme Court and the Courts of Appeals and reiterated its belief that the power vested in the latter is extremely limited. The court, however, concluded that it was faced with exceptional circumstances sufficient to justify exercise of the power and proceeded to a consideration of the petition on its merits.

Thus, on the naked question of power, there seems to be no disagreement between this court and that of the First Circuit. However, we differ with the able jurists of that circuit in evaluating the exceptional nature of the circumstances sufficient to endow the court with the power. Compare *Chicago, R. I. & P. R. Co.* v. *Igoe*, 220 F. 2d 299 (CA-7), with *In re Josephson*, 218 F. 2d 174, 181 (CA-1). To this extent and on this basis, we feel constrained to disagree with the decision in the *Narragansett* case. The basis for that decision is the view that if the issue as to

the propriety of the interlocutory order may eventually reach the appellate tribunal by appeal after final judgment on the merits, then jurisdiction is wanting to test its propriety by mandamus in advance of a trial and final decision. Under such a view, it is immaterial whether or not any effective or adequate relief from an unauthorized order is possible by way of appeal from the final judgment.

This is a much more rstricted position than that which we voiced in the *Rock Island* case, 220 F. 2d 299. Assuming the challenged orders to be beyond the governing rule, respondent's action in referring these cases to a master is, in effect, a refusal on his part, as a judge, to try the causes in due course, rather than referring them to a tribunal which is unauthorized by law. Unless we have power to decide the question of propriety of his action at this time, petitioners are faced with the necessity and great expense of protracted trials which conceivably may eventually lead nowhere but to a complete retrial of the causes before a competent tribunal. While we recognize that there is a doubtful area surrounding the dividing line between the power of this court and its lack of power to issue the writ, in view of the extraordinary nature of these causes, we think that any doubt must be resolved in favor of the existence of the power to issue the writ, if we find that the orders were beyond the court's power under the pertinent rule. See *Chicago, R. I. & P. R. Co.* v. *Igoe*, 212 F. 2d 378, 381 (CA-7); *Ford Motor Co.* v. *Ryan*, 182 F. 2d 329, 330 (CA-2).

Upon the merits of the petitions, then, we are concerned only with the question of whether the contested orders are in conformity with the provisions of Rule 53 (b) of the Federal Rules of Civil Procedure, 28 U. S. C. A.

Petitioners in No. 11472 are defendants in a civil action instituted in the court below entitled *"William Rohlfing, et al.* v. *Cat's Paw Rubber Co., et al.,"* No. 50-C-229. Petitioner in No. 11473 is defendant in a similar action pending below entitled *"Norman P. Shaffer, et al.,* v. *United States Rubber Co., et al.,"* No. 50-C-884. Each cause is assigned to the calendar of Judge La Buy for trial.

The averments of each petition are substantially identical, and the following statement of fact, taken from the petition in No. 11472, controls disposition of both petitions. The *Rohlfing* case, from which this action stems, was instituted by a complaint filed by 87 independent shoe repairmen against petitioners and others, praying equitable relief and damages by reason of defendants' alleged violations of the antitrust laws.

The cause came on for trial on February 23, 1955. Judge La Buy suggested that it be referred to a master for trial and, on the following day, over the objections of petitioners, entered an order of reference. The essence of the order follows: "The Court, being confronted with an extremely congested calendar, and finding that exceptional conditions exist for this reason, is of the opinion that this case can be more adequately and intelligently presented to the Court for ultimate disposition by reference to a master." On April 29, all parties to the action moved to vacate the order. These motions were denied May 6, 1955. On May 18 the parties appeared before the master, pursuant to notice, for trial of the cause. At this time all the parties presented objections to the reference. On May 20, the master ruled that the cause would proceed to trial before him; whereupon petitioners filed their petition in this court praying that a writ of mandamus issue to compel Judge La Buy to vacate the order and to direct trial of the cause to proceed before the court.

The only material factual difference between No. 11472 and No. 11473 is that the *Shaffer* case (No. 11473) had not been called for hearing before the master prior to the date when the petition for writ of mandamus was filed. Under the circumstances recited in these petitions, however, the same principles and considerations are determinative of the question of the propriety of the order of reference in each case.

Rule 53(b) provides that: "A reference to a Master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a

jury, save in matters of account; a reference shall be made only upon a showing that some exceptional condition requires it." In support of his action, respondent outlines the complexity of these cases in which the court must determine the question of liability of each of the several defendants to each of the plaintiffs and the element of accounting which must enter into the final judgment. He asserts that consideration of these factors, together with the fact that he is faced with an extremely congested calendar, brings the cases within the "exceptional condition" proviso of the Rule, and that the orders for reference constitute, therefore, an exercise of a sound discretion which this court should not disturb.

Our exact question, then, is whether the facts presented in justification of the orders of which complaint is made, as a matter of law, bring the orders of reference within the exceptional circumstances mentioned in the rule. In other words, has the district court failed to conform to the rule of civil procedure prescribed by the Supreme Court. This is a question of law dependent upon the pleaded facts. Mere error of law in a decision upon the issues presented to the court, of course, is not ground for mandamus. But if the facts upon which the judge relied in entering the order are wholly insufficient to justify nonconformance with the rule, then the action of the judge in entering the order, over the objection of all parties concerned, must be held so arbitrary and extraordinary as to justify issuance of the writ.

Measured by these tests, we do not believe respondents' position tenable. Although evidence in the nature of accounts may have a substantial bearing on the issue of liability, the element of accountancy, in the sense intended in the "account" provision of the Rule, which these cases contain can not arise until the issue of liability has been resolved. The rule refers to the subject matter of the controversy, not to the nature of the evidence which may be introduced in the course of a trial. It provides a blanket permit for reference of any accounting, see *Troyak* v. *Enos*, 204 F. 2d 536, 544-5 (CA-7), but, even as to matters

of account, we agree with the belief expressed in *Barrick* v. *Pratt*, 32 F. 2d 732, 733-4 (CA-5), that a reference need not follow automatically in every case. The *Rohlfing* and *Shaffer* cases, in their present status, before trial has been had on the question of liability, are not "matters of account." Indeed, if the court finds that defendants are not liable, there will never be an accounting. The reference cannot be sustained under the "account" proviso, and the prospective accounting issues may not be relied on to prove exceptional circumstances. "This is not an accounting, but the case is exceptional because an accounting may be necessary and because some of the evidence bearing on the issue of liability may be relevant also to the issue of accounting should that prospective issue arise" is an argument which seeks to expand the positive permissive accounting proviso of the Rule to include any and all issues which may bear even a remote relationship to a question of an accounting. That, essentially, is the argument made here which we find ourselves unable to accept.

The substance of the remaining contentions is that the issues presented are complex; that the judge is confronted with a congested calendar; that the reference to a master will facilitate a speedy trial and disposition of the causes, and that it cannot be said that the judge abused the discretion vested in him by the Rule in entering the orders complained of.

There is an element of discretion inherent in the last clause of the Rule, *i. e.*, the trial court must determine in each case whether "exceptional conditions" exist which will authorize a reference. When these orders are tested in the light of the interpretation placed on the Rule by the Supreme Court and the Courts of Appeals, we can only conclude that the orders complained of are beyond the permissive scope of the rule, and constitute an abuse of discretion. *Dixie Cup Co.* v. *Paper Container Mfg. Co.*, 174 F. 2d 834, 836, 837 (CA-7).

The reported decisions are in general agreement that a congested calendar and the existence of complex issues do not constitute exceptional conditions warranting refer-

ences to a special master. In *McCullough* v. *Cosgrave*, 309 U. S. 634, a patent case was referred to a master for trial on the trial court's recital that the judge to whom the case was assigned was ill and no other judge could be obtained, that the parties desired an early trial, that the calendar of the court was congested, and that the issues were complicated.[1] On an application for a writ of mandamus, the Supreme Court summarily directed the district judge to vacate the order of reference and directed that the case be set for trial before the District Court in due course, citing Rule 53(b) and its prior opinion in *Los Angeles Brush Corp.* v. *James*, 272 U. S. 701.

In the *James* case, the court made it plain that where the subject matter concerns enforcement of the rules which the court has formulated, mandamus may be employed to compel the district court to conform to those rules. Concerning the reference to a master, there the court commented that there was no reason why one litigant "should be subjected to any greater expense than any other litigant, except as it may be involved in the inherent and inevitable difference between the presentation of the issues as to the merit and validity of a patent grant, and that which obtains in the litigation of an ordinary bill for relief in equity, or of an action at law upon a debt or for a tort." *Los Angeles Brush Corp.* v. *James*, 272 U. S. 701, 707.

Even though in *James*, it might be thought by some that the court indulged in dictum, it seems beyond argument to us, that, in *McCullough*, the Supreme Court, by its decision, finally made the law of the land in a case where the issues were clearly drawn. 3 Fed. Rules Serv. 53b. 122, Case 1, pages 496-7, reports that an examination of the petition, the return to the order to show cause, and

[1] When Rule 53(e) is considered in its entirety, the weight to be accorded the factor of complex issues as bearing on an order of reference is determined by the distinction between "jury" and "non-jury" cases. With respect to the former the Rule provides for a reference "only when the issues are complicated," while in the latter a reference is proper only when "exceptional conditions" require it. Inasmuch as the framers of the Rule made complexity of the issues a ground for reference in the one instance, we think that they had reference to something more than complexity when the ground for reference in non-jury cases was defined as requiring the existence of "exceptional conditions."

briefs on file with the Clerk of the United States Supreme Court, discloses that, in *McCullough*, two actions by Kammerer Corporation and Baash-Ross Tool Co. against McCullough and others, filed in 1935 and 1937 respectively, and an action by McCullough against Kammerer and Baash-Ross, filed in 1938, all seeking injunction against infringement of patents, had been consolidated for trial, but continued several times because of inability to reach trial or by stipulation; that on January 15, 1940, the district judge assigned the case to a master for trial, his order reading as follows:

"These consolidated cases having been set to be tried before the Court on January 2, 1940, and the Judge before whom the cause was to be tried having been unable to try the same because of his physical condition, and all parties having expressed the desire for an early trial, and the Court having given counsel an opportunity to endeavor to secure another judge to conduct the trial; and it appearing that these cases have been pending a long time and are patent suits seeking an injunction and require a protracted trial of complicated issues; and the calendar of this Court being congested and no other judge being available to try the same within a reasonable time, the Court finds that an exceptional condition exists which requires and warrants a reference to a Master. * * *"

In the editorial comment on the case, in 3 Fed. Rules Serv. p. 722, it was said: "A recent Supreme Court decision, although summary in form, should serve as a warning against too liberal use of the power of reference." See also comment to the same effect in Encyclopedia of Federal Procedure, 2d Ed. § 3425, p. 52, and Barron & Holtzoff, Federal Practice and Procedure, Rules Ed., § 1163, p. 872-873.

It seems clear, therefore, by its decision in the *McCullough* case, the Supreme Court depended upon the doctraine it had announced in James. If it was improper for the district judge in *McCullough* to refer the two causes to a master, so it seems beyond question that the order

of the district court in the present cases was likewise improper and beyond the court's legal power under the rule forbidding references.

In *United States* v. *Kirkpatrick*, 186 F. 2d 393 (CA-3), an admiralty case was referred to a commissioner for trial to relieve a congested docket including a backlog of admiralty controversies, the order reciting the long pendency of the affected case, the desire of the parties for an early trial and a shortage of judges to facilitate an early disposition of the case. The Court of Appeals construed the language of Admiralty Rule 43 permitting a reference "where the court * * * deems it necessary for the purpose of justice" and the "exceptional condition" provision of Rule 53(b) as being *in pari materia*, requiring the existence of exceptional circumstances to warrant a reference to a master. The court held that the factors recited above did not constitute exceptional circumstances and issued a writ of mandamus directing the lower court to vacate its order referring the case to a commissioner, citing the *McCullough* case and *Adventures in Good Eating* v. *Best Places to Eat*, 131 F. 2d 809 (CA-7).

In *McClellan* v. *Carland*, 217 U. S. 268, the court held that mandamus to require a trial court to proceed with and determine a pending suit might issue by a court of appeals in aid of its appellate jurisdiction. This was reiterated in *Ex parte United States*, 287 U. S. 241, at 246, where the court held that a trial judge had no power to refuse to issue a bench warrant, as it was not a matter of discretion, but a mandatory duty to issue the warrant.

In *Ex parte Skinner & Eddy Corp.*, 265 U. S. 86, the Supreme Court issued a writ requiring the Court of Claims to set aside an order reinstating a cause which it had dismissed. The court said, at page 95: "It only remains to inquire whether this is a proper case for the writ asked. Mandamus is an extraordinary remedial process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. Although classed as a legal remedy, in issuing it a court must be largely controlled by equitable principles. *Duncan Townsite Co.*

v. *Lane*, 245 U. S. 308, 312; *Arant* v. *Lane*, 249 U. S. 367, 371. It would be a useless waste of time and effort to enforce a trial in the Court of Claims, if we were, upon appeal, to find that the petitioner was unjustly deprived of his substantial right to dismiss his petition, as we should have to do for the reasons stated."

McCullough, *James* and *Kirkpatrick* and the reasoning in the other cases cited are, we think, decisive of the issues before us. Except in matters of account, reference to a master is a tool which can be employed only sparingly and only in exceptional cases. *Adventures in Good Eating* v. *Best Places to Eat*, 131 F. 2d 809 (CA-7); *Buckley* v. *Altheimer*, 152 F. 2d 502 (CA-7); *In re Irving-Austin Bldg. Corp.*, 100 F. 2d 574 (CA-7). In this day of crowded dockets and voluminous calendars, the position now advanced by respondent, if adopted, would make reference to a master the rule rather than the exception in every case of a complicated nature which is filed in the district court.

The cases principally relied on in support of the orders are largely inapposite. *Ex parte Peterson*, 253 U. S. 300, and *Graffis* v. *Woodward*, 96 F. 2d 329 (CA-7), involved the reference of jury cases which involved complicated factual issues.[2] *Troyak* v. *Enos*, 204 F. 2d 536 (CA-7), in which we approved an order referring the whole cause to a master for trial, was an action against a trustee for an accounting as to his handling of a trust estate. Furthermore, we indicated that exceptional circumstances were present, in that the trial judge to whom that case was assigned had retired and was sitting by assignment only until a successor could be appointed and that disposition of the cause required that hearings be held at various places throughout the United States.

In *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, it was sought to mandamus the trial judge to set aside an order

[2] Although the opinion in In re Narragansett Pier Amusement Corp., 224 F. 2d 231, does not touch on the merits and therefore does not reach the "jury"—"non-jury" distinction, the order for reference there complained of was entered in a jury case on the trial judge's finding that the issues presented were complicated.

striking certain pleas in abatement because he deemed them insufficient. The Supreme Court held that the action complained of was merely the exercise by the court of its jurisdictional powers in settling the issues in the case. It said at page 27: "In sustaining the Government's demurrers to the pleas and its motions to strike, the district court did not * * * refuse to act on the pleas. Instead, it held that they were insufficient in law to abate the criminal prosecution. In thus ruling on questions of law decisive of the issue presented by the pleas and replications the district court acted within its jurisdiction as a federal court to decide issues properly brought before it." Obviously, the court was not confronted with a claim that the trial court had transcended a rule promulgated by the Supreme Court. Just as obviously the trial court here was not "acting within its jurisdiction as a federal court to decide issues properly brought before it", for here the court was not deciding issues presented but was, over the objection of both parties to the suit, refusing to be bound by the rule.

In *Bankers Life & Casualty Co.* v. *Holland,* 346 U. S. 379, the district court had severed an action for treble damages under an antitrust act as to one defendant, and transferred the cause as to him to the district where he lived. The opposing party sought mandamus to compel the judge to set aside the order. The Supreme Court held, that inasmuch as the district court had jurisdiction both of the subject matter of the suit and of the person, it became necessary and proper for it to rule upon the issue raised in the due course of the litigation. The Court, at page 382, said: "The ruling on a question of law decisive of the issue presented by Cravey's motion and the replication of the petitioner was made in the course of the exercise of the court's jurisdiction to decide issues properly brought before it. *Ex parte American Steel Barrel Co.,* 230 U. S. 35, 45-46 (1913); *Ex parte Roe,* 234 U. S. 70, 73 (1914)."

Helene Curtis Industries v. *Sales Affiliates,* 105 F. Supp. 886, was an action for a declaratory judgment as

to validity and infringement of a patent. The cause was referred to a master on the court's finding that the litigation tended to disrupt irreparably the business of the whole industry affected and that the case could not be reached for trial by the court for many months after the date of the application for a reference. In denying a petition for a writ of mandamus to compel the trial court to vacate the order for reference, the Court of Appeals for the Second Circuit sustained the lower court's finding as to exceptional conditions. *Helene Curtis Industries* v. *Sale Affiliates,* 199 F. 2d 732. The opinion reflects the latter court's view that petitioner's objection to the reference was not made in good faith. Thus, the court referred with approval to the finding by the District Court that defendant was guilty of "forum shopping with a vengeance", in that it did all within its power to stay the declaratory judgment suit until a patent infringement suit subsequently filed by it in another federal district had been decided. The petitioner was in the unenviable position of resisting an early disposition of the controversy in New York, while arguing that the New York case should be stayed on the ground that a decision could be had sooner in Texas.

In *Neale* v. *McCormick,* 19 F. 2d 320, cer. denied 275 U. S. 530 (CA-9), the court approved the wholesale reference of all patent cases to a master to alleviate the congestion of the court calendar. We think this case cannot be reconciled with either the *James* case or the *McCullough* case, and find ourselves unable to accept the postulate upon which the decision rests. We likewise reject the wide declaration in *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231 (CA-1), for the reasons stated in the discussion of the jurisdiction question.

We are extremely reluctant to be compelled to entertain a petition for a writ of mandamus against a district judge. We are not unmindful of the possible unhealthy consequence of such a proceeding, which the Supreme Court has so clearly summarized. *Ex parte Fahey,* 332 U. S. 258, 259-260; *Bankers Life & Casualty Co.* v. *Holland,* 346 U. S. 379 at 384-385. And we are

not unaware of the congestion in the calendar of the judges of the court below, or unsympathetic with the problems which this condition imposes upon them. It appears, however, that advantage might be taken of the pre-trial procedures at the court's disposal to facilitate an expeditious disposition of the cases and to ease somewhat the congestion problem.[3] Also, if need be, the possibility and advisability of asking that these cases be reassigned to a different judge for trial might well be explored.

Although reluctant to make use of the drastic remedy of mandamus, we believe that these causes present circumstances which make an appeal from a final judgment a wholly inadequate remedy. In accord with the views expressed herein, we direct that the writ issue in each case directing respondent to vacate the order of reference and directing that a trial of each cause be had in due course before the District Court. *McCullough* v. *Cosgrave, supra.*

MAJOR, *C. J.*, dissenting. I agree that this court has the jurisdiction and power to issue the writ. The question is whether in the exercise of a sound discretion this is an appropriate case for the utilization of that power. As was stated in *Roche et al.* v. *Evaporated Milk Association et al.*, 319 U. S. 21, 25:

> "The common law writs, like equitable remedies, may be granted or withheld in the sound discretion of the court. *Ex parte Peru, supra,* p. 584, and cases cited; *Whitney* v. *Dick,* 202 U. S. 132, 136, 140. Hence the question presented on this record is not whether the court below had power to grant the writ but whether in the light of all the circuumstances the case was an appropriate one for the exercise of that power. In determining what is appropriate we look to those principles which should guide judicial discretion in the use of an extraordinary remedy rather than to formal rules rigorously controlling judicial action."

[3] See Report adopted by Judicial Conference of the United States, April 21, 1951, 13 F. R. D. 62.

Further the court stated (page 26):

> "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. [Citing cases.]"

The last statement was quoted with approval in *Bankers Life & Casualty Co.* v. *Holland et al.*, 346 U. S. 379, 382, and the court pointed out that the respondent Judge had jurisdiction of the subject matter and the person and that it was necessary in the course of the litigation for him to make the ruling under attack. The court further stated:

> "Its decision against petitioner, even if erroneous—which we do not pass upon—involved no abuse of judicial power, *Roche* v. *Evaporated Milk Assn.*, *supra*, and is reviewable upon appeal after final judgment. If we applied the reasoning advanced by the petitioner, then every interlocutory order which is wrong might be reviewed under the All Writs Act."

No criteria are supplied either by statute or rule for determining the "exceptional condition" referred to in Rule 53 (b). Therefore, Judges might well disagree as to the circumstances which would justify a reference. Respondent in the exercise of his judgment concluded that the circumstances were sufficient and ruled accordingly. A Judge with authority to make a correct ruling has the same authority to make an erroneous ruling. As was stated in the *Roche* case (page 27):

> "Its decision, even if erroneous—a question on which we do not pass—involved no abuse of judicial power, and any error which it may have committed is reviewable by the circuit court of appeals upon appeal appropriately taken from a final judgment, and by this Court by writ of certiorari."

Stated another way in the same opinion (page 32):

> "In the present case, the district court has acted within its jurisdiction and has rendered a decision which, even if erroneous, involved no abuse of judicial power."

The majority opinion asserts that respondent in entering the order of reference abused his discretion. No reason is assigned, however, for such holding other than that respondent made an erroneous ruling. But that is not sufficient, as is shown by statements from *Roche* and *Bankers Life, supra*. In fact, respondent in entering the order under attack had at least as wide a discretion as this court has in deciding whether the writ should issue. In my opinion, there was no abuse of discretion by respondent, but the issuance of the writ will constitute an abuse of discretion by this court. The shoe is to be placed on the wrong foot.

The majority opinion reasons that unless action is taken at this time "petitioners are faced with the necessity and great expense of protected trials which conceivably may lead nowhere but to a complete retrial of the cause before a competent tribunal." This sort of reasoning has been definitely repudiated. In the *Roche* case, the court in response to the same contention stated (page 30):

> "We may assume, as they allege, that that trial may be of several months' duration and may be correspondingly costly and inconvenient. But that inconvenience is one which we must take it Congress contemplated in providing that only final judgments should be reviewable. Where the appeal statutes establish the conditions of appellate review, an appellate court cannot rightly exercise its discretion to issue a writ whose only effect would be to avoid those conditions and thwart the Congressional policy against piecemeal appeals in criminal cases."

See same case, page 31, and also the *Bankers Life* case, page 379. Respondent's action at most constitutes no more than an erroneous ruling entered in the course of

the proceeding and will be subject to review upon appeal from a final judgment.

The majority places great reliance upon *McCullough et al. v. Cosgrave*, 309 U. S. 634, and *United States et al. v. Kirkpatrick et al.*, 186 F. 2d 393. The opinion states that these two cases are "decisive of the issues before us." In my view, that is an erroneous conception of those cases. As stated, the Supreme Court in *McCullough* summarily directed a District Judge to vacate an order of reference. Apparently there has been considerable loose talk as to the reason for the court's action, which I suspect that court will, sooner or later, be called upon to repudiate. It is not difficult, however, to ascertain why the Supreme Court directed the issuance of the writ in that case. While it stated no reason, it cited only *Los Angeles Brush Manufacturing Co. v. James*, 272 U. S. 701. In the *James* case, as in the instant case, it was sought by mandamus to compel a District Judge to vacate an order referring a patent case to a Master. On page 703 of the opinion, the order of the District Judge is set forth, which contains the reasons for making the reference, consisting in the main of a congested court calendar. While the reference in that case was under Equity Rule 59, it is pertinent to note that the requirement under that rule was substantially the same as under present Rule 53 (b), that is, that it should be made "'only upon a showing that some exceptional condition requires it." The Supreme Court denied issuance of the writ but engaged in considerable discussion relative to mandamus, evidently for the enlightenment of District Judges (see page 708). In that discussion the court stated (page 707):

> "Were it [the Supreme Court] to find that the rules have been practically nullified by a district judge, or by a concert of action on the part of several district judges, it would not hesitate to restrain them."

Evidently that is the stateemnt in the *James* case which the court relied upon in the *McCullough* case. Certainly the court in the latter case did not cite the former as authority for the proposition that a District Judge was subject to

mandamus for ordering a reference because of a congested docket because the court in the *James* case refused to issue a writ where the reference was made for that reason. If there be any doubt, however, why the writ was directed to issue in *McCullough*, it is dispelled in *Roche*, wherein the court stated (page 31):

> "Hence there are in this case no special circumstances which would justify the issuance of the writ, such as the persistent disregard of the Rules of Civil Procedure prescribed by this Court, found in *McCullough* v. *Cosgrave*, 309 U. S. 634 (see *Los Angeles Brush Co.* v. *James*, 272 U. S. 701, 706-8) * *."

The *Kirkpatrick* case falls in the same category. There it appears that a conference of District Judges was called by the Chief Judge to formulate a plan to relieve a congested docket of admiralty cases. A plan was agreed upon among the Judges by which such cases were to be referred to Commissioners. In fact, the court (page 397) referred to the plan as "a wholesale reference of admiralty cases." It is true in *Kirkpatrick* the court (page 399), referring to the *McCullough* case, stated that a congested court docket was not regarded in that case "as sufficient to empower the district court to make a reference in that case." I think that is a gratuitous statement. At any rate, no word has been spoken by the Supreme Court, directly or indirectly, that a writ of mandamus should issue to restrain a District Judge from referring a case to a Master because of a congested docket. On the other hand, the Supreme Court in *James* denied the writ where reference was made for that reason and has clearly indicated that the writ issued in *McCullough* because of a practice or custom to refer all cases of a certain class to a Master.

Reference as was done in *McCullough* and *Kirkpatrick*, in accordance with or by reason of a plan, practice or custom, constitutes an abdication of the judicial function. It is the very antithesis of the exercise of judicial discretion. A reference under such circumstances bears no resemblance to that with which we are now concerned. Respondent's

reply to the rule to show cause sets forth the circumstances which he took into consideration. He decided, as he had the authority to do, that the showing was sufficient. We need not now be concerned with whether that decision was correct or erroneous. In any event, there was no abuse of judicial power which should move this court in the exercise of its sound discretion to issue this extraordinary writ.

No good purpose could be served in commenting upon numerous other cases referred to in the majority opinion, other than the recent opinion of this court in *Chicago, Rock Island and Pacific Railroad Company* v. *Igoe*, 220 F. 2d 299. That case rather than supporting the opinion illustrates its fallacy. There, the District Judge denied a motion for transfer under 28 U. S. C. A. 1404 (a). This court, in directing the issuance of the writ, stated (page 304):

> "To warrant action by us, there must be something more than an erroneous decision. Our problem is, was the refusal by the District Judge to order the transfer an abuse of discretion?"

In the instant situation the most that can be said of respondent's action is that he made an erroneous decision. In the *Igoe* case we held that there had been an abuse of discretion on the basis that the statute providing for the transfer of cases set forth the criteria to be employed in ruling upon such a motion. Such being the case, this court concluded that there had been an abuse of discretion because respondent had failed to follow the criteria which Congress had prescribed. In the instant case, however, as pointed out, the rule under consideration provides no criteria as to what constitutes the "exceptional condition," and respondent's judgment on that score is, if challenged, subject to review on appeal from a final judgment.

Finally, the majority appears to place reliance upon the fact that the order of reference was made over objection of both parties to the suit. Any logic in this reasoning is not discernible to me. The court's jurisdiction, with its right to exercise its discretion in making the reference, was precisely the same whether it was made with the consent of the parties, over their objection or on the court's own volition.

The action of the majority will, in my judgment, seriously impede the disposition of business in the District Courts of this Circuit, particularly in Chicago, where because of the heavy case load a Master is an indispensable arm of the court. No District Judge can now feel safe in making such a reference, with knowledge that this court is likely to substitute its judgment for his. If reference is to be outlawed, it should be by legislation or Supreme Court rule rather than by decision of this court. It is easy to speculate on other means of relieving congested court calendars, such as the procurement of additional Judges. Such potential relief, however, which may never materialize, is of little aid. District Judges are faced with realities which speculative theories do not dispel.

I would deny the issuance of the writ.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 822

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

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HONORABLE WALTER J. LA BUY,
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PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI.

EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
Attorneys for Petitioner.

JOHNSTON, THOMPSON, RAYMOND, MAYER & JENNER,
Of Counsel.

The Schaffer Press Inc.—ANdover 3-6850

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ARGUMENT.

Respondents' brief in opposition ignores rather than answers the reasons advanced by petitioner in support of the petition for a writ of certiorari. The points urged are without merit.

1. There is a true conflict between the holding of the Court below and the decision of the First Circuit in *Narragansett Pier Amusement Co.*, 224 F. 2d. 231 (C. A. 1, 1955), *cert. den.*, 76 S. Ct. 103. The opinion of the First Circuit in *Narragansett* and its prior holdings referred to in that case (See *e. g., In re Josephson*, 218 F.

2d 174) make clear that its construction of the "All Writs Act" is in direct conflict with the "roving commission" to correct any erroneous decision or abuse of discretion which the Court below thought was conferred upon it by that Act. Respondents point to that portion of the First Circuit's opinion in *Narragansett* in which it said that "no exceptional circumstances" were present which would "render it appropriate" to grant the writ of mandamus. This phrase, "exceptional circumstances," is merely a short-hand expression employed by the First Circuit to say that jurisdictional power is not conferred by the "All Writs Act" to hear and determine this class of cases, since they do not tend to impede or frustrate the Court's eventual appellate jurisdiction. The prior First Circuit cases, expressly relied on in *Narragansett*, make this wholly clear.

2. Contrary to respondents' contention, *McCullough* v. *Cosgrave*, 309 U. S. 634 (1940), does not hold that a court of appeals has power to issue a writ of mandamus to revoke a reference to a master. *McCullough* involved only the issuance of an original writ of mandamus in which the jurisdiction of this Court was invoked pursuant to Section 234 of the Judicial Code of 1911 (36 Stat. 1156) which expressly conferred jurisdiction on this Court to entertain such writs. This Section reads as follows:

> "The Supreme Court shall have power to issue . . . writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States . . . ."

This section (which was subsequently repealed) contrasts with Section 14 of the Judiciary Act of 1789 (1 Stat. 81) empowering Courts of Appeal and District Courts, as well as the Supreme Court, to issue "all other

writs not specifically provided for by statute, *which may be necessary for the exercise of their respective jurisdictions*, and agreeable to the principles and usages of law." (Emphasis added) It was this latter section which was re-enacted without substantial change as Section 262 of the Judicial Code of 1911 and finally, in 1948, as the present "All Writs Act", 28 U.S.C. §1651(a); and it is this latter section upon which the Court below necessarily relied.

The issuance of the original writ of mandamus (by this Court) in *McCullough* was thus based on a statute which conferred on this Court a general supervisory power over the inferior federal courts. By contrast, the statutory authority conferred on the Courts of Appeal and now embodied in the "All Writs Act" was confined to the issuance of extraordinary writs only in aid of their appellate jurisdiction. The historical evolution of the "All Writs Act", and the decisive distinction between the general supervisory power originally conferred on the Supreme Court and in existence in 1940 when *McCullough* was decided, with the limited power conferred on the Courts of Appeal, is fully reviewed by the First Circuit in the case of *In re Josephson*, 218 F. 2d 174, 176-180 (CA 1, 1954). Reliance upon *McCullough* to sustain the decision of the Court below is thus wholly misplaced, and ignores as well the most recent expressions of this Court on the limits of judicial power conferred on the Courts of Appeal to entertain and issue extraordinary writs. (See *e.g.*, *Bankers Life and Casualty Co.* v. *Holland*, 346 U.S. 379).

3. On the merits, respondents have nothing to say in support of the arbitrary interference by the Court of Appeals with a properly entered discretionary order of the lower court referring the cases in question to a master. Particularly respondents are unable to show what scope

is left to Rule 53(b) in non-jury matters if the present references are erroneous. What is the "exceptional" non-jury case which may be referred? To this question properly raised by the dissenting judge below, respondents have no answer. We submit (as did the judge dissenting below) that the decision in this case nullifying Section 53(b) was reached only because *McCullough* was misconstrued. (See Pet. pp. 15-17.))

This Court should issue a writ of certiorari to clarify which of the several differing interpretations of *McCullough*, reached by courts and legal commentators, is correct (See Pet. p. 16).

CONCLUSION.

The issues presented for review are of importance in the administration of justice in the federal courts. Furthermore, a conflict exists between the First Circuit and the Court below. For these reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

THE HONORABLE WALTER J. LA BUY,
United States District Judge,

By: EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
His Attorneys.

JOHNSTON, THOMPSON, RAYMOND, MAYER & JENNER,
11 South LaSalle Street,
Chicago 3, Illinois,
Of Counsel.

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BRIEF FOR PETITIONER.

EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
11 S. La Salle St.,
Chicago 3, Illinois,
Attorneys for Petitioner.

JOHNSTON, THOMPSON, RAYMOND, MAYER & JENNER,
Of Counsel.

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BRIEF FOR PETITIONER.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

OPINION BELOW.

The order sought to be reviewed was entered in a consolidated case, comprising two original proceedings for mandamus filed in the Court of Appeals for the Seventh Circuit. The opinion of the Court majority, as well as that of the dissenting Judge, is reported at 226 F. 2d 703.

JURISDICTION

The order of the Court of Appeals was entered on October 13, 1955. A petition for rehearing and for rehearing *en banc* was denied on November 17, 1955. The jurisdiction of this Court is invoked pursuant to 28 USC 1254, petition for certiorari being filed January 11, 1956. Certiorari was granted by this Court February 27, 1956.

STATUTE AND RULE INVOLVED.

The pertinent provision of the "All Writs Act" (28 USC 1651(a)) reads as follows:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

The pertinent Sections of the Judicial Code (28 USC 1291, 1292) read as follows:

Section 1291. Final decisions of district courts.

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

Section 1292. Interlocutory decisions.

"The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dis-

solving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed;

(4) Judgments in civil actions for patent infringement which are final except for accounting."

Rule 53 (b) of the Federal Rules of Civil Procedure reads as follows:

"(b) *Reference.* A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it."

QUESTIONS PRESENTED FOR REVIEW.

1. Whether the "All Writs Act" (28 USC 1651 (a)) confers jurisdiction upon the Courts of Appeal to review by writ of mandamus a District Court's interlocutory and discretionary order of reference to a Master in Chancery.

2. Whether the issuance of a writ of mandamus is proper under the "All Writs Act" to revoke and annul an order of reference entered by a District Court acting within its jurisdiction merely because the majority of the Court of Appeals concluded the reference to be er-

roneous under Rule 53 (b) of the Federal Rules of Civil Procedure.

3. Whether the referral of a non-jury case to a Master for trial which the District Court found was necessitated by the unusual complexity of the factual and legal issues, by the length of time required to hear and determine such case, by the matters of account inherent in resolving the issues of liability, and by the extreme congestion of his trial calendar, was authorized by Rule 53 (b) of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE.

Nature of the Case.

The two consolidated cases now before this Court were commenced as two original petitions for mandamus filed with the Court of Appeals for the Seventh Circuit. The moving parties in No. 11472 in the Court of Appeals (R. 1-4) (Howes Leather Co., Inc. and Montgomery Ward & Co., Inc. v. The Hon. Walter J. LaBuy) were two of multiple defendants in a case pending before the respondent District Judge (*Rohlfing, et. al.* v. *Cats Paw Rubber Co.*, No. 50 C 229, N.D. Ill., E.D.) which had been referred to a Master in Chancery for Trial. The moving party in No. 11473 in the Court of Appeals (R. 210-213) (Howes Leather Co., Inc. v. The Hon. Walter J. LaBuy) was one of multiple defendants in a companion case also pending before the same District Judge (*Shaffer, et al.* v. *U. S. Rubber Co., et al.*, No. 50 C 844, N.D. Ill., E.D.), which had been similarly referred to a Master for trial at the same time as its companion case. The two petitions for mandamus, without the assertion of any grounds to sustain them, asked the Court of Appeals to

compel vacation (R. 3, 212) of the orders of reference previously entered in the two cases pending in the court below. The District Judge (petitioner here) filed detailed answers to the two petitions for mandamus, setting forth the exceptional conditions which impelled him to refer the cases to a Master (Answer in case 11472 [Rohlfing] R. 5-15; in case 11473 [Shaffer] R. 215-219). Attached to the answers as exhibits thereto were certain documents and proceedings filed or had in the court below, which show, among other things, the complex and elaborate character of the litigations which had been referred to the Master. (Exhibits to Answer Case 11472 [Rohlfing] R. 24-210; Exhibits to Answer Case 11473 [Shaffer] R. 220-310). None of the allegations of the answers, and none of the exhibits, were challenged in the court below by any pleadings; and the case was submitted and decided on said answers.

The Referrals to the Master.

The cases (still pending in the District Court) which give rise to this dispute, *Rohlfing, et al.* v. *Cats Paw Rubber, et al.*, and its companion case, *Shaffer, et al.* v. *U. S. Rubber Co., et al.*, were filed in 1950. (R. 29, 30; 22, 223).

In the *Rohlfing* case, eighty-seven plaintiffs (shoe repair men) sued twenty-five defendants (manufacturers and wholesalers of rubber goods, leather goods, and shoe polish, as well as department and chain store users). The proceedings had in the case are so numerous that the docket entries alone, as kept by the District court clerk (R. 30-57) filled twenty-eight large docket pages, up to the time the mandamus proceedings were filed. Motions relating to the pleadings; motions for summary judgment and for partial summary judgment; motions regarding service of process; motions to add or dismiss parties; motions relating to discovery procedures; motions re-

garding depositions; motions and objections regarding interrogatories, and other matters, occupied the court and the parties for several years. (R. 30-57) Nearly all of these matters were briefed. (R. 30-57) At least five written opinions were filed in the *Rohlfing* case by the District Judge. (June 18, 1951, R. 34; July 8, 1952, R. 38; Jan. 29, 1954, R. 47; April 28, 1954, R. 49; Dec. 10, 1954, R. 53) Plaintiffs finally filed their second amended complaint (R. 59-130), consisting of 104 separate counts (one for each plaintiff), seeking relief against each of twenty-one named defendants, for statutory treble damages, an injunction, and an accounting; and the defendants answered. By reason of dismissals, voluntary or by decision of the court, there are now eighty-seven plaintiffs and six defendants remaining on the *Rohlfing* case (R. 8).

In the *Shaffer* case, ten plaintiffs, who were wholesalers of shoe repair materials and related items, sued twenty defendants, who were either manufacturers or wholesalers of shoe repair materials and related items (R. 216). In the course of a series of motions nearly as long as in the other case, (the docket entries fill eighteen pages, R. 222-240) plaintiffs eventually filed their second amended complaint, consisting of nine counts, one for each plaintiff, against each of twenty-one defendants. By reason of various dismissals, there now remain in the *Shaffer* case six plaintiffs and six defendants, all of whom have answered (R. 216).

The second amended complaints in both cases, together with the answers, present a multitude of difficult and exceedingly complex issues of law and fact, at least some of which are common to both cases.

Both complaints allege violations of Section 1 of the Sherman Act: at the trial evidence will therefore be offered to prove on the one hand (and to deny on the

other) the existence of a conspiracy among the defendants to fix and maintain non-competitive prices, and to restrict marketing channels for shoe repair materials and related products within a defined market as well as to prove (and disprove) injury to, and the separate damages of each of the eighty-seven plaintiffs in one case and each of the six plaintiffs in the other. (R. 8, 216; Rohlfing complaint in Dist. Ct., R. 60-68; also 69-130; Answers R. 131-135; R. 136-140; R. 141-146; Shaffer complaint, R. 241-251; Answers R. 256-62; R. 262-268; R. 269-272).

Both complaints similarly allege, (and the answers deny) violations of Section 2 of the Sherman Act by reason of a claimed conspiracy by defendants to monopolize the sale of shoe repair materials. This forecasts evidence tending to establish (and rebut) conspiracy, monopoly in a defined market, and resulting injury and damage to each of the many separate plaintiffs. (R. 8, 216; Rohlfing complaint 60-68, also 69-130; Answers, R. 131-135; R. 136-140; R. 141-146; Shaffer complaint, R. 241-255; Answers R. 256-62; R. 262-268; R. 269-272).

More significant, both complaints allege violations of Section 2(a) of the Robinson-Patman Act, under which statute each plaintiff is required to establish his separate claim against each defendant—some six hundred separate claims of price discrimination, each necessarily proceeding on its individual basis. Defendants' answers deny illegality, and allege justification of price differences on the basis of manufacturing or delivery costs. (R. 9, 217; R. 261-2; R. 270-1; 266-267; R. 134-135; R. 138-140; R. 144-146) It was these Robinson-Patman act claims which led the various defendants to assert to Judge LaBuy in a brief filed in the *Rohlfing* case that it "will be next to impossible" to try the *Rohlfing* case. (R. 9; R. 201-209) Each plaintiff must undertake to establish a separate

law suit against each defendant by proving that each defendant sold goods of like grade and quality to others at discriminatory prices. The issues of discriminatory prices, "like grade or quality" and competitive effect are difficult enough; but since each defendant is justifying its conduct on the basis of cost justification, and the meeting of competitive prices, detailed proofs must be made from defendants' accounting records of all of its relevant sales transactions over the entire period covered by the complaint, and from defendant's related cost records, to say nothing of proof of allegedly relevant sales made by each of the various defendant's competitors. On these issues, the evidence will be of the accounting type—including myriads of selling transaction, details as to costs of manufacture, sale and delivery, on the basis of which will be erected the parties' ultimate contentions of price discrimination on the one hand, and of justification (of one kind or another) on the other. See *Rohlfing* complaint, par. 16, 17, 20, 21, (R. 66-68); Klinger ans., par. 19, 20, 23 (R. 134); Goldblatt answer, par. 16, 17, 20, 21, (R. 138, 139); Griffin answer, par. 16, 17, 20, 21 (R. 144); and for example of detailed accounting materials involved, see Howes Leather Co. answers to interrogatories, (R. 147-174); and Armour & Co., answers to interrogatories, (R. 174-200). And see Shaffer complaint, par. 16, 17, 24 (R. 248-249); Armour & Co. answer, par. 16, 17, 22 and Third Defense (R. 259-262); Griffin Mfg. Co. answer, par. 16, 17, 24 (R. 266-267); Grippo answer, par. 12, 16, R. 270-272; and for accounting detail, defendants' answers to certain interrogatories (R. 277-311).

Plaintiffs further allege in both cases a conspiracy in violation of Section 3 of the Robinson-Patman act in the granting and receiving of discriminatory rebates. (R. 8, 216; R. 61, 65-67; R. 242, 247-249). This adds additional factual and legal problems to the trial.

The various defendants in the trial court (including respondents here), in a brief filed with Judge LaBuy, themselves characterized the trial of the *Rohlfing* case as follows (R. 9-10; 201-209):

> *"Complexity of Trial.*
>
> It will be next to impossible for this Court to try this case, as the pleading now stands. The trial will be reminiscent of a 'battle Royal'. There are one hundred four (104) plaintiffs and ten (10) defendant manufacturers. Considered as a price discrimination case there are one thousand forty (1,040) separate, distinct and unrelated price discrimination claims in Count I. There may possibly be ten (10) in each Count from Count II through Count CV. Each plaintiff must show not only the price at which purchases were made from a manufacturer by a defendant department or chain store in competition with him, he must also show that he bought goods of a like grade and quality from the same seller at a higher price, and that the effect thereof was to 'substantially . . . lessen competition . . . or . . . prevent competition between him and such department or chain store.' . . . The trial would be *fantastically complicated.*" (emphasis by the authors of the brief).

While defendants' brief related to a prior (*i.e.* first amended) complaint, the second amended complaint on which the case will be tried dropped out only a single count, and still contained one hundred four counts.

With 87 plaintiffs and six defendants remaining in the *Rohlfing* case; and six plaintiffs and six defendants remaining in the *Shaffer* case, there will still be *558 separate Robinson-Patman Act controversies* to be heard and decided in the two cases.

During the pendency of these suits, lengthy discovery proceedings were instituted and were continuing. (R.

17-21; 30-57; 223-240). On February 23, 1955 these cases, which were approaching trial but which were still "below the line" (R. 17), were called before the District Court on the plaintiffs' request to reset them for trial to May, 1955 to permit the taking of further depositions (R. 17). At that time the court advised the parties of his congested calendar, suggested the possibility of referring the cases to a master to expedite their trial and advised counsel to appear in his chambers the following morning (R. 20-21). At that time he outlined the reasons (set forth below) which he felt required the referrals to a Master in Chancery (R. 7, f.f. and R. 215). The master set both cases for May 2, 1955 to permit the plaintiffs to finish the taking of certain depositions (R. 14). Plaintiffs then took sixteen depositions in California, Massachusetts and New York (R. 14).

Just before the hearings before the master were to commence, an oral motion was made by all parties to revoke the orders of reference, but for the sole reason that a subsequently added defendant had, two months and two days after the date of the reference to the master (R. 14, 57, first entry; 29), filed a jury demand. (R. 22, 24). Some days later, on May 6 (R. 57) the court sustained a motion to dismiss filed by the defendant who was demanding a jury, incidentally eliminating the jury trial question; and after the hearing of arguments (R. 57), and consideration by the court, the oral motion to vacate the reference was denied (R. 14, 15; 57). The petitions for writ of mandamus were filed with the Court of Appeals shortly thereafter, on May 26, 1955. (R. 1-5; R. 210-214).

Reasons for the Referrals.

The answers of the Trial Judge, in response to the petitions for the writ of mandamus, set forth the facts and reasons which necessitated these references—facts

and reasons which were stated to the parties in the judge's chambers at the time (R. 7-15; 215-219), and which may be summarized as follows:

1. The cases are complicated and complex, involving multiple plaintiffs and defendants, and place in issue difficult questions of law and fact concerning claims of violations of Sections 1 and 2 of the Sherman Act and Sections 2 and 3 of the Robinson-Patman Act (R. 7-11; 215-218).

2. The cases will require a detailed accounting analysis, including the examination of a very large number of transactions (R. 10-11; 218).

3. The demands of the parties for an early trial date upon completion of the pre-trial discovery (R. 13; 218).

4. The congested nature of the Court's calendar, which made impossible any early trial before the Court (R. 11-13; 218).

5. The great length of time required to conduct these trials (R. 13); and

6. The further length of time required to analyze the evidence and prepare opinions (R. 13).

The District Judge states in his answers to the petitions for mandamus that all of these facts, considered together, constitute an "exceptional condition" within the meaning of Rule 53(b) of the Federal Rules of Civil Procedure, requiring, in the opinion of the trial Judge, in the exercise of his "best judgment and discretion," that these cases be referred to a Master (R. 7-215).

The underlying facts concerning the complexity of the cases and the accounting type evidence needed to establish liability have already been set forth.

As to the other points the record shows:

a. Demands for Early Trial.

Both parties were demanding trial immediately upon completion of the discovery and depositions, which they expected to be completed by May, 1955. (R. 13; 16-21).

b. Length of the Trials.

The court concluded the cases would require *at least* two full months to try (R. 13); the plaintiffs orally estimated "probably six weeks" (R. 18); defendants had claimed it would take plaintiff two months (R. 18) to present plaintiff's case.

The court further concluded that it would take another two months for him to draw conclusions from the evidence and prepare his decision (R. 13).

c. Congestion of the Court's Calendar.

In making the references, Judge LaBuy stated to the parties: ". . . that the cases were very complicated and complex, that they would necessarily take considerable time to try; that my calendar was congested with many cases long delayed on account of my engagement in a number of very long trials, the most recent of which was the case of *United States* v. *DuPont, et al.*; that following this long trial I had the longest civil calendar of any judge in the district, and that while I was making rapid progress in reducing the congestion, it would be unfair to the litigants clamoring for trial in other cases, many of which could be tried in a few hours or a few days, were I to again become involved in a protracted trial." (R. 6). The judge had other cases already actually scheduled for trial for every day from then (February) up until the beginning of the summer recess (July). (R. 13). The number of extremely complicated and time consuming

cases which Judge LaBuy had heard as Trial Judge had been very burdensome, and had resulted in unavoidable delay in the trial of other cases. (R. 12) A chart (R. 12) tabulates these long cases, and the number of actual trial days consumed by these long trials (exclusive of hearings on motions, consideration of briefs, review of transcripts of testimony and exhibits, and preparation of opinions). The longest and most recent of these was the case of *United States* v. *DuPont* (now on review in this Court) which remained on trial before Judge LaBuy for practically one year solid, from November, 1952 up to the end of December, 1953, consuming 101 actual trial days (R. 12). This almost interminable trial was the principal cause of the heavy congestion still existing in Judge LaBuy's calendar a year later.

The Judge alleged that ". . . . the abnormal number of 'big' cases assigned to me has resulted in a very serious congestion of my trial calendar . . ." (R. 12) In April, 1955 Judge LaBuy had pending on his docket 871 cases, consisting of 312 civil cases, 66 criminal cases and 495 bankruptcy cases. (R. 11) Only one other judge assigned to the Northern District of Illinois had a greater number of cases pending; and no judge had as many criminal cases pending (R. 11).

No Evasion of Rule 53(b).

Despite the trial congestion faced by Judge LaBuy, the record shows that during the last 6 years (and exclusive of the two cases here involved), Judge LaBuy had referred only approximately nine cases to a Master in Chancery, four of which were hearings on limited issues only. (Ans. par. 18, R. 12, R. 218)

Decision of the Court of Appeals.

On the foregoing record, the majority of the Court of Appeals ordered that the writ of mandamus issue, directing respondent to vacate the two orders of reference, and directing that said cases be tried in due course in the United States District Court. (R. 331-2). The majority opinion by Judge Lindley stated that Judge LaBuy's orders were "erroneous" and constituted an "abuse of discretion." Judge Major, dissenting, observed that "If reference is to be outlawed, it should be by legislation or Supreme Court rule, rather than by decision of this court", and also stating: "In my opinion, there was no abuse of discretion by respondent, but the issuance of the writ will constitute an abuse of discretion by this court. The shoe is to be placed on the wrong foot."

SUMMARY OF ARGUMENT.

I.

The orders of reference were authorized by rule 53(b) F.R.C.P. A rule providing for an exceptional course means that occasionally at least that course may be followed. By the terms of the rule: references are not limited to matters of account; references may be made (Rule 53(e)(4)) against the objection of the parties.

Rule 53 is substantially former Equity Rule 59, in effect since 1912, and decisions under that rule are relevant. In one draft of Rule 53 (then Rule 58) proposed in 1936 "exceptional condition" was defined to mean a congested docket. While the language was later broadened, this draft shows that a congested docket was one of the "exceptional conditions".

The lower courts (District and Courts of Appeal) have since 1912 rather uniformly interpreted "exceptional con-

dition" to include very complex cases which the court is quite unable to try at any early time, because of docket congestion; however, this must never become a pretext to evade the rule. The decisions of this Court have been to the same effect; and this Court has interfered with references where the Judges of a District acted in concert to evade the rule.

The decision of the court below virtually nullifies Rule 53(b) in non-jury cases. This Court should give the rule an interpretation which, while keeping references "the exception and not the rule", will permit the trial courts to make reasonable references when actually necessary to get their judicial business done.

II.

Whether or not the orders of reference were actually erroneous, they were within the jurisdiction of the lower court, and the Court of Appeals erred in ordering the writs of mandamus to issue. The powers of the Court of Appeals are governed strictly by Act of Congress. Sections 1291 and 1292 of the Judicial Code restrict review of interlocutory orders by Courts of Appeal; the orders in question are not the type of interlocutory orders which, under the statute, the Court of Appeals may review.

Review of such unreviewable interlocutory orders by Courts of Appeal by mandamus has been consistently condemned by this Court (as well as by Courts of Appeal of the First and Eighth and other Circuits) except where necessary to confine the lower court to its jurisdiction,

or to compel it to exercise its jurisdiction, or protect the Court of Appeal's right to ultimate review.

Here the District Court was acting within its jurisdiction, and the Seventh Circuit's right to review its final decree is not threatened. None of the special reasons justifying review by Courts of Appeal of interlocutory orders by mandamus are here present; the Court of Appeals directed the orders expunged merely because a majority considered the orders to have been erronous. This type of piece-meal review is contrary to the policy laid down by Congress; the Court of Appeals orders should be reversed.

ARGUMENT.

I.

The Orders of Reference Were Authorized by Rule 53(b) of the Federal Rules of Civil Procedure.

Rule 53(b) of the Federal Rules of Civil Procedure provides:

> "A reference to a Master shall be the exception and not the rule . . . in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it."

From this language, and from a consideration of Rule 53 in its entirety, it is clear that Masters in Chancery are authorized as aids to the courts, to enable the courts to get their judicial business done. Masters in Chancery are not abolished, but are authorized, by the rule.

Furthermore, while references "shall be the exception and not the rule," it is clear that, whenever the exceptional situation arises, the trial judge is authorized to make the reference. As the Court of Appeals for the Second Circuit has said in *Helene Curtis Industries, Inc.* v. *Sales Affiliates,* 199 Fed. 2d 732, 733 (1952):

> "* * * the very existence of a rule providing for an exceptional course means that occasionally at least that course may be followed."

The question presented is as to the meaning of the words "some exceptional condition requires". What exceptional conditions?

First, it cannot mean merely "matters of account", for these are separately provided for in the rule. The "exceptional condition" necessarily refers to something else.

Second, it cannot, (as the majority below seemed to feel) mean cases where the parties ask for or agree to the reference. It is clear from Rule 53 as a whole that references are authorized without the consent of the parties. Rule 53(e)(4) provides: "The effect of a master's report is the same *whether or not the parties have consented to the reference* * * *" (Emphasis ours). These words necessarily contemplate references, even over the objection of the parties. We must look further for the meaning of these words.

1. The Derivation of Rule 53(b)

The rule has been in its present form since 1938. However, it is very similar to Equity Rule 59, in effect since 1912, which read as follows:

> "Save in matters of account, a reference to a master shall be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it."

Former Equity Rule 46, presently Rule 43(a)(2) of the Federal Rules of Civil Procedure, provided in part,

> "In all trials in equity the testimony of a witness shall be taken orally in open court, except as otherwise provided by statute or rule."

Equity rules 46 and 59 were designed to alter the former equity practice in which little of the testimony was taken in open court and a reference to a master was usual and customary. *Los Angeles Brush Mfg. Corp.* v. *James,*

272 U.S. 701 (1927). In that case a defendant in a patent case which had been referred to a master, filed a mandamus petition with the United States Supreme Court asking that the order of reference be expunged, on the ground no "exceptional condition" existed. The lower court's order recited the need of the parties for an early trial, the "congestion of the court's calendar", "many other causes entitled to be first heard, including a large number of criminal cases * * *" The order also recited that this condition would continue "unless many of the patent causes, including this cause", could be referred to a master for hearing.

The Court discussed the origin and purpose of the two equity rules; the Court's belief in the value of the change made by the rules, and the Court's intention not to amend them. The Court said:

> "The reason given in the order for referring these cases to a special master is that there is congestion in the court's calendar and that there are many other cases entitled to be heard first, including a large number of criminal causes which should be preferred over civil causes as to the trial thereof, that other civil litigation has not been accorded a fair proportion of the time of the court, and that the condition will continue unless many of the patent cases, including this case, be disposed of by such a reference.
>
> "In view of the recitals of the order, we are not inclined to infer that there has been any deliberate abuse of the discretion in this matter, or to hold that there may not sometimes be such a congestion in the docket as to criminal cases as would justify a district judge in not literally complying with the requirements of the two rules in question. There has been an emergency, due to a lack of judges in some districts which we cannot ignore. We shall therefore deny leave to file this petition, but are content to

state our views on the general subject, with confidence that the District Judges will be advised how important we think these two rules are, and that we intend, so far as lies in our power, to make them reasonably effective for the purpose had in view of their adoption."

The Court also said that:

"Were it to find that the rules have been practically nullified by a district judge, or by a concert of action on the part of several district judges, it would not hesitate to restrain them."

In 1936 the Advisory Committee on Rules for Civil Procedure submitted its preliminary draft of proposed new rules. This draft contained a proposed Rule 58 reading as follows:

"Rule 58. Reference to a Master—Exceptional not Usual. A reference to a master shall be made only in exceptional cases. In actions which are to be tried by jury, such a reference shall be made only when the issues are complicated; in actions which are to be tried without a jury, save in matters of account, it shall be made only in case it appears that the court cannot otherwise give to its other business the attention and dispatch reasonably required."

The note to this proposed Rule 58 stated:

"Substantially Equity Rule 59 (Reference to Master —Exceptional, Not Usual) with 'exceptional condition' defined, and the rule extended to actions formerly legal. See *Ex Parte Peterson*, 258 U.S. 300, 40 Sup. Ct. 543, 64 L. Ed. 919 (1920)."

The April 1937 report of the Advisory Committee on Rules for Civil Procedure renumbered Rule 58 to Rule 53(b) and amended it to its present form and wording. The Note was changed slightly to read:

"This is substantially Equity Rule 59 (Reference to Master—Exceptional, Not Usual) extended to actions formerly legal. See *Ex Parte Peterson*, 253 U.S. 300 . . . (1920)."

The final report of the Advisory Committee on the Rules for Civil Procedure, dated November 1937, did not make any changes in Rule 53(b) as proposed by the report of April 1937. The Supreme Court adopted Rule 53(b) as submitted by the Advisory Committee.

The words finally selected, "upon a showing that some exceptional condition requires it," are much broader than the words in proposed Rule 58, which would have limited references in non-jury cases to situations where a congested docket so required. The language of proposed Rule 58 was considered too limiting, and a broader and more indefinite phrase was adopted in order to achieve more flexibility in the rule, and confer a larger discretion upon the courts. However, this history of Rule 53(b) at least suggests that the draftsmen considered that a congested court calendar amounted to an "exceptional condition" justifying a reference to a master, whenever actually necessary to permit the court to get its work done.

2.

The Lower Courts Have Rather Uniformly Construed Equity Rule 59 and Present Rule 53(b) to Permit Trial Courts, in the Exercise of Discretion, to Refer to a Master Complex Cases Which the Court Itself Cannot Expeditiously Try Because of a Congested Docket.

We believe that every opinion interpreting these rules, (including even the majority opinion below) concedes that the trial judge exercises "discretion" in applying the rule, and in deciding when a reference is required.

The lower courts have furthermore rather uniformly held that a reference is justified where the court's docket is unusually crowded, and the matter is so complicated that it will require an extended hearing which the court is unable to give within a reasonable time.

District Court Cases:

Berlin v. *Evans,* 300 Fed. 677 (1924 D.C.E.D. Pa.) ("exceptional condition * * * the business of the court was extraordinarily congested * * * impracticable for either judge of this court to give the time necessary for the hearing * * *;") *Holt Mfg. Co.* v. *C. L. Best Gas Turbine Co.,* 245 Fed. 354 (1917 D.C.N.D. Calif.) (reference ordered upon motion of one party and over objection of other party because of extremely complex character of patent case, the Court saying: "* * * It is to be left to the discretionary power of the court to say what character of case shall be deemed exceptional * * *."); *Flanders* v. *Coleman,* 249 Fed. 757 (D.C. S.D. Georgia, 1918). ("It is to be presumed that the judge properly exercised his discretion in making the reference * * *"); *Bliss* v. *Anaconda Copper Mining Co.,* 167 Fed. 342, p. 347; *Ramsey* v. *Home Mortgage Co.* (D.C.E.D. N.C. 1931) 47 F. 2d 621, at pp. 627, 636; *Helene Curtis* v. *Sales Affiliates,* 105 F. Supp. 886, 906 (S.D.N.Y. 1952).

Circuit Courts of Appeals Cases:

Smith v. *Brown* (CCA 5th 1925), 3 F. 2d 926, (which approves the cases of *Flanders* v. *Coleman,* 249 Fed. 757, and *Holt Mfg. Co.* v. *Best Gas Turbine Co.* 245 Fed. 354, cited *supra*); *Neale, Inc.* v. *McCormick* (CCA—9th 1927) 19 F. 2d 320 (which refused to issue a writ of mandamus to expunge an order of reference, finding that in a given period fourteen patent cases had been heard

by the District Judges, and nineteen others had been referred; that the instant cases would require two weeks for trial, and that congested calendars prevented an early court trial); *P.R.R. No. 35*, 48 Fed. 2d 122 (CCA 2d 1931) (concerns admiralty rules, but follows cases on equity rules; the court concludes that the District Court had discretion "which we must assume to have been properly exercised until the contrary appears;" that the lower courts' "* * * power to refer troublesome issues depends, not upon his escape from the difficulties they raise, but because their trial will take a long time. If so, we cannot see why crowded dockets do not come within the same excuse. Suits must somehow be decided and delay may be nearly as bad as no decision at all * * *. We agree, of course, that if it appeared that they used the practice merely as a fetch to evade the rule, we should be called upon to intervene * * *"); *Troyak* v. *Enos*, 204 F. 2d 536 (CA 7, 1953) (Suit for breach of trust against trustee; reference proper because of "exceptional circumstances", *i.e.*, some witnesses were out of jurisdiction; case was "broad and complex . . . Three hundred exhibits were offered . . . hearing of parol evidence required some six days"; the judge had retired, was sitting only until his successor should be appointed).

3.

Prior Decisions of This Court.

We have already discussed (*supra*, p. 18-20) the case of *Los Angeles Brush Corp.* v. *James*, 272 U.S. 701, which construed the equity rules, concluding that the trial judge's recital of docket congestion was sufficient to sustain his order of reference in a patent case, but warning the courts that the rules must be followed.

This Court had previously, in 1920, in the case of *Ex Parte Peterson*, 253 U.S. 300, refused to issue a writ of mandamus to compel a trial judge to vacate an order of limited reference in a case at law. In this opinion, which was rendered some eight years after the adoption of Equity Rule 59, this Court said (p. 314): "The inherent power of the court to invoke such aid" (*i.e.*, of a Master) "is the same whether the court sits in equity or at law." The court discussed the problem as follows:

> "Courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties. Compare *Stockbridge Iron Co.* v. *Cone Iron Works*, 102 Massachusetts 80, 87-90. This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause. From the commencement of our Government, it has been exercised by the federal courts, when sitting in equity, by appointing, either with or without the consent of the parties, special masters, auditors, examiners and commissioners. To take and report testimony; to audit and state accounts; to make computations; to determine, where the facts are complicated and the evidence voluminous, what questions are actually in issue; to hear conflicting evidence and make finding thereon; these are among the purposes for which such aids to the judges have been appointed. *Kimberly* v. *Arms*, 129 U.S. 512, 523. *Whether such aid shall be sought is ordinarily within the discretion of the trial judge;* but this court has indicated that where accounts are complex and intricate, or the documents and other evidence voluminous, or where extensive computations are to be made, it is the better practice to refer the matter to a special master or commissioner than for the judge to undertake to perform the task himself." (Emphasis ours.)

The decision of the Court of Appeals below, and the opinions of both the majority and dissenting judges, were based on their respective interpretations of *McCullough* v. *Cosgrave*, 309 U.S. 634 (1940). This brief *per curiam* opinion of this Court, citing only *Los Angeles Brush Corp.* v. *James*, 272 U.S. 701, does not explain why this Court issued the writ of mandamus to vacate the district court's order of reference. The majority below, concentrating on the recitals of the order of reference expunged by McCullough, concluded that congestion of dockets and the complex nature of the case referred can *never* justify a reference. The dissenting judge, concentrating on facts alleged in McCullough's petition for mandamus, (which asserted that the Judges of that particular district had adopted a rule or practice of generally referring all patent infringement cases to Masters for trial, regardless of the nature of the cases or other considerations) concluded that the reference was vacated by this Court in McCullough because the rules had been "practically nullified by a district judge, or by a concert of action on the part of several district judges. . . . "

A later opinion of this court, *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21 (1943), refers to and explains the *McCullough* v. *Cosgrave* ruling as follows:

> "Hence there are in this case no special circumstances which would justify the issuance of the writ, such as the persistent disregard of the Rules of Civil Procedure prescribed by this Court, found in *McCullough* v. *Cosgrave*, 309 U.S. 634 (see *Los Angeles Brush Co.* v. *James*, 272 U.S. 701, 706-8); . . . "

Text writers have taken this same view of the *McCullough* v. *Cosgrave* ruling; *Stern and Gressman, Supreme Court Practice*, 2nd edition 1954, say at p. 281: "See *Los Angeles Brush Co.* v. *James*, 272 U.S. 701, 706,

and *McCullough* v. *Cosgrave*, 309 U.S. 634 (Mandamus issued to prevent district court from continually referring patent cases to a master in violation of Supreme Court Equity Rules, although courts may in their discretion refer some cases to masters)."

We believe that the dissenting judge correctly understood this Court's holding in the *McCullough* v. *Cosgrave* case; he said "References as was done in *McCullough* . . . in accordance with or by reason of a plan, practice or custom, constitutes an abdication of the judicial function. It is the very antithesis of the exercise of judicial discretion."

If this is the meaning of *McCullough*, that case does not apply here. Petitioner, Judge LaBuy, with a very crowded docket, had referred only nine cases in six years; his reference of these two cases was based on a specific consideration of the problems presented by those cases against the background of his crowded docket. In making this reference, he exercised a sound discretion.

The purpose of Masters, we assume, is to assist the courts by hearing matters (such as accounts) which are time-consuming and replete with detail, and which the Master can in all probability hear and digest in a report for the judge, thereby reducing the issues and the scope of the matters which the judge will eventually have to consider. Properly employed, this can save much time for the judge.

The present cases are certainly appropriate for a master to hear on this basis. The master can hear and record the terrific amount of detailed accounting evidence necessary to support plaintiffs' some six hundred separate claims, and condense this into a report for the

judge, with appropriate conclusions and recommendations. It is probable that by the time the evidence has been received, and the Master's report filed, many of the claims will be either wholly unsupported by evidence, or on the other hand conceded, so that the work of the judge will be much less than if he had been required to hear the entire matter. Instead of four months, the matter may be considered and decided in one or two weeks, enabling the judge to catch up on other matters. If any cases are because of their nature appropriate under Rule 53(b) for reference, these are such cases. In so deciding Judge LaBuy exercised a sound discretion, and his considered action should not have been arbitrarily ordered vacated.

It will be time enough to restrain a district judge by mandamus, if he should use his crowded docket "as a fetch to evade the rule," as Judge Learned Hand said in *P.R.R. No. 35*, 48 F. 2d 122. The record in this case utterly refutes any such charge or suspicion.

4.

Other Cases Cited by the Majority of the Court Below.

The court below relied primarily on its own interpretation of *McCullough* v. *Cosgrave*.

At the same time it rejected *Neale* v. *McCormick*, 19 F. 2d 320 (CCA 9, 1927) saying: "We think this case cannot be reconciled with either the *James* case or the *McCullough* case, and find ourselves unable to accept the postulate upon which this decision rests." In *Neale* v. *McCormick* a writ of mandamus was sought against two district judges, to compel vacation of an order of reference in a patent case. The court of appeals made findings as to the number of patent cases heard in a given period

of time by the judges, compared with the number of patent cases referred by them to masters; concluded there was no policy of referring all patent cases to masters as charged; found the judge's dockets were crowded, that the case referred would take considerable time to hear, that these facts constituted exceptional conditions, and denied the writ, citing as authority only the *James* case. Certiorari was applied for and denied (*Neale* v. *McCormick*, 275 U.S. 530; 48 Sup. Ct. 28; 72 L. Ed. 409). While we are aware that denial of *certiorari* does not reach the merits, it seems that the writ would have been awarded if (as the court below believed) the lower court's decision was impossible to reconcile with the only case it cited, the then recently decided *James* case.

U. S. v. *Kirkpatrick*, 186 Fed. 2d 393 (3rd Circuit 1950), relied on by the majority below, condemned a practice of the district courts in referring all admiralty cases " . . . solely pursuant to a plan for the trial of admiralty cases generally by commissioners . . . " and not because of any circumstance peculiar to the cases referred. This doctrine is inapplicable here, since there is no charge here that petitioner, Judge LaBuy, ever referred his cases by "categories".

The ruling of the court below, for all practical purposes, forecloses all references in non-jury cases except for "matters of account". This is a virtual nullification of the rule, and deprives the lower courts of assistance that is, in exceptional cases, actually granted them by rule. We respectfully ask this Court to give an appropriate construction of Rule 53(b) for the guidance of lower courts—a construction which will permit the lower courts to get their urgent work done.

II.

Whether or Not the Orders of the District Court Were Erroneous, the Court of Appeals Erred in Ordering the Writs of Mandamus to Issue.

Assuming, for the purpose of this argument only, that petitioner, Judge LaBuy, was in error in referring the two cases in question to the master, nevertheless the Court of Appeals should have refused to permit the filing of the petitions for *mandamus;* or, having permitted such filing, should have refused to issue the writs.

The Constitution of the United States defines federal judicial power in general terms; confers on the Supreme Court certain original jurisdiction; and then provides: "In all other cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." U. S. Constitution, Art. III, Sec. 2.

The Court of Appeals is created wholly by statute, and has only appellate jurisdiction.

In the use of mandamus directed to a lower federal court, the Supreme court is exercising appellate jurisdiction, and in this is subject to control of Congress. *Ex Parte Pennsylvania Company,* 137 U.S. 451; 11 Sup. Ct. 141 (1890); *Ex Parte Harding,* 219 U.S. 363; 31 Sup. Ct. 324.

Prior to 1948, and without substantial change for over 150 years, there were two separate statutes conferring on the Supreme Court the power to issue writs of mandamus; but only the second of these applied to the lower federal courts.

The first statute (known for a number of years prior to 1948 as Section 342) provided:

> "The Supreme Court shall have the power to issue . . . Writs of Mandamus, in cases warranted by the principles and usages of law . . ."

The second statute (known for a number of years prior to 1948 as Section 377) provided:

> ". . . The Supreme Court, Circuit Court of Appeals and the District Courts shall have power to issue all writs not specifically provided for by statute, which may be necessary to exercise their respective jurisdictions, and agreeable to the usages and principles of law."

This second statute was known as the All Writs Act.

In 1948 the Judicial Code was entirely revised, Section 342 was repealed, and the all-writs act was retained, in the following words, as Section 1651(a):

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Thus in considering cases governing mandamus, it is important to consider that (a) the review of lower court orders by either the Supreme Court or the Court of Appeals is subject to regulation by Statute; (b) prior to 1948 the Supreme Court could issue writs of mandamus either under the broad provisions of Section 342 or the more limited provisions (in aid of jurisdiction) of Section 377; (c) The Court of Appeals was always limited to issuance of writs of mandamus in aid of its jurisdiction; (d) since 1948 both courts are governed by the same statute, Sec. 1651(a).

However, the Supreme Court's power to issue writs of mandamus under Sec. 1651(a) is still broader than the

power of the court of appeals; *Moore's Judicial Code*, 1949, observes (p. 597):

> "In reference to the Supreme Court the section has greater scope: (a) for, although Sec. 1651 cannot enlarge the court's original jurisdiction it can nevertheless operate in aid thereof; and (b) because the Supreme Court's appellate jurisdiction is more extensive than that of the court of appeals and because the Court has final supervisory power over the federal judicial system."

In this case we are considering the propriety of two judgments of the Court of Appeals ordering the issuance of writs of mandamus in the year 1955.

It is obvious from its opinion in this case that the Court of Appeals considers that it has the right under Sec. 1651(a) to correct erroneous interlocutory orders of the trial courts in advance of final decision whenever, in its discretion, it feels so inclined.

However, Congress has strictly limited the review by the Court of Appeals of interlocutory orders by Sections 1291 and 1292 of the Judicial Code; and the interlocutory orders (of reference) entered by Judge LaBuy were not the kind of interlocutory orders which are reviewable by the Court of Appeals. The regulation of interlocutory appeals is important, since unauthorized interlocutory appeals serve largely to delay litigations by piecemeal trials and appeals.

The review, by mandamus, of Judge LaBuy's orders was appellate; and this constituted the unlawful review of an interlocutory appeal contrary to the direction of Congress.

a. Court of Appeals Decisions.

The best view seems to be that interlocutory orders may be reviewed by the Courts of Appeals by mandamus, only if the Court of Appeal's right to review the case later by appeal would otherwise be frustrated.

This is the view held in the First Circuit; that review of an interlocutory order by mandamus will be granted if otherwise no review by the Court of Appeals of the ultimate final order could be had; but will be denied if the case will reach the Court of Appeals after final decree. *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231; *In re Josephson*, 218 F. 2d 174, in which latter case the careful reasoning of the court is completely set forth. Thus in the former case, the Court of Appeals of the First Circuit refused to review by mandamus an interlocutory order referring cases to a master, since it could review the entire case after final decree; but in the latter case it reviewed by mandamus an interlocutory order sending a case to *another Circuit* for trial, since this order would prevent all review by the Court of Appeals of the First Circuit.

However, the Seventh Circuit refuses to follow this doctrine, and reviews interlocutory orders by mandamus whenever it feels special circumstances so warrant,—construing the all-writs act as conferring on it a "roving commission" to supervise interlocutory orders of the district courts in advance of final decision. This view seems to undermine completely the statutes of Congress limiting interlocutory appeals to certain types of interlocutory orders only.

The views of the Seventh Circuit are also contrary to the Eighth Circuit. *Carr* v. *Donohoe*, 201 Fed. 2d 426 (CA 8, 1953); *Hydraulic Press Mfg. Co.* v. *Moore*, 185

Fed. 2d 800 (CA 8, 1950). And the practical reasons for denying review of such interlocutory orders by mandamus are eloquently set forth by Judge Goodrich of the Third Circuit in *All States Freight, Inc.* v. *Modarelli*, 196 Fed. (2) 1010 (CA 3, 1952).

Other court of appeals decisions on the point are set forth and briefly discussed in your petitioner's Petition for Certiorari p. 9-12.

b. Supreme Court Decisions Defining Court of Appeals Right to Review Interlocutory Orders of Trial Court by Mandamus.

The issuance of the writs of mandamus by the court below in the present cases is erroneous under recent decisions of this Court considering the power of the Court of Appeals to issue writs of mandamus to review interlocutory orders of trial courts.

In *Roche* v. *Evaporated Milk Association*, 319 U.S. 21, 63 Sup. Ct. 938 (1943) Mr. Chief Justice Stone stated (p. 22): "The question for decision is whether the Circuit Court of Appeals below rightly issued its writ of mandamus to the district court to correct that court's alleged error in striking respondents' pleas in abatement to a criminal indictment."

After setting forth the provisions of the All Writs Act, the court stated petitioner's contentions as follows (p. 25): "They argue that as the district court's order striking the pleas in abatement was an exercise of its jurisdiction, its action is reviewable only on appeal and not by mandamus, and that since by Congressional enactment and policy appellate review of the district court's order may be had only on review of a final judgment of conviction, that legislation and policy are not to be circumvented by resort to mandamus.

"We are of opinion that in the circumstances of this case these are valid objections to the exercise by the circuit court of appeals of its discretionary power to issue the writ."

In holding that the Court of Appeals committed error in issuing the writ of mandamus to correct the interlocutory order of the lower court, this Court stressed the fact that ". . . the trial court, in striking the pleas in abatement, acted within its jurisdiction as a district court; that no action or omission on its part has thwarted or tends to thwart appellate review of the ruling; and that while a function of mandamus in aid of appellate jurisdiction is to remove obstacles to appeal, it may not appropriately be used merely as a substitute for the appeal procedure prescribed by the statute. . . ." The court pointed out that the traditional use of mandamus ". . . has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." (p. 26)

The following statement of the Supreme Court applies to the present case. (p. 26): "But the present case involves no question of the jurisdiction of the district court. Its jurisdiction of the persons of the defendants, and of the subject matter . . . is not questioned."

The Court concluded (p. 29):

> "Circuit courts of appeals, with exceptions not now material, have jurisdiction to review only final decisions of district courts, 28 U.S.C. Sect. 225(a), 28 U.S.C.A. Sect. 225(a). Respondents stress the inconvenience of requiring them to undergo a trial in advance of an appellate determination of the challenge now made to the validity of the indictment. We may assume, as they allege, that that trial may be of several months' duration and may be correspond-

ingly costly and inconvenient. But that inconvenience is one which we must take it Congress contemplated in providing that only final judgments should be reviewable. Where the appeal statutes establish the conditions of appellate review an appellate court cannot rightly exercise its discretion."

In *Bankers Life and Casualty Co.* v. *Holland*, 346 U.S. 379, 74 Sup. Ct. 145 (1953), the refusal of a circuit court of appeals to review by mandamus a district court order changing venue from the Southern District of Florida to the Northern District of Georgia was reviewed by the United States Supreme Court on Certiorari, and affirmed. Since the district court admittedly had jurisdiction of the subject matter of the suit and of the parties, this interlocutory ruling was held not reviewable by mandamus. The Court said (p. 382) that the lower court's

". . . decision against petitioner, even if erroneous—which we do not pass upon—involved no abuse of judicial power . . . and is reviewable upon appeal after final judgment. If we applied the reasoning advanced by the petitioner, then every interlocutory order which is wrong might be reviewed under the All Writs Act. The office of a writ of mandamus would be enlarged to actually control the decision of the trial court rather than used in its traditional function of confining a court to its prescribed jurisdiction. In strictly circumscribing piece-meal appeal, Congress must have realized that in the course of judicial decision some interlocutory orders might be erroneous. The supplementary review power conferred on the courts by Congress in the All Writs Act is meant to be used only in the exceptional case where there is clear abuse of discretion or usurpation of judicial power . . ."

The court specifically refused to consider pleas of inconvenience and hardship occasioned by the appeal being delayed until after final judgment.

In *Parr* v. *United States,* 72 Sup. Ct. 912, (June 11, 1956) where the Supreme Court refused to grant certiorari to review on behalf of the defendant a certain interlocutory order of dismissal, it also held that writs of mandamus and prohibition should not be issued to expunge the order for the following reasons:

> "We think that extraordinary writs should not issue. Such writs may go only in aid of appellate jurisdiction. 28 U.S.C. Sect. 1651. The power to issue them is discretionary and it is sparingly exercised. Rule 30 of the Revised Rules of this Court and the cases cited therein. This is not a case where a court has exceeded or refused to exercise its jurisdiction, see *Roche* v. *Evaporated Milk Assn.,* 319 U.S. 21, 26, nor one where appellate review will be defeated if a writ does not issue, cf. *Maryland* v. *Soper,* 270 U.S. 9, 29-30. Here the most that could be claimed is that the District Courts have erred in ruling on matters within their jurisdiction. The extraordinary writs do not reach to such cases; they may not be used to thwart the congressional policy against piecemeal appeals. *Roche* v. *Evaporated Milk Assn., supra,* at p. 30."

In the present case the District Court admittedly had jurisdiction of the parties and of the subject matter of the suits. It had the right under Rule 53(b) to determine whether it should try or refer to a Master the cases before it. Its decision, right or wrong, is an interlocutory decision not reviewable by the Court of Appeals under the All Writs Act.

In arriving at the conclusions he did, the District Judge considered the factors which he was required to consider under the rule and the cases construing it; he did not abuse his discretion or usurp judicial power. The dissenting judge in the court below was correct in stating:

> "The majority opinion asserts that respondent in entering the order of reference abused his discretion. No reason is assigned, however, for such holding other than that respondent made an erroneous ruling. But that is not sufficient, as is shown by statements from *Roche* and *Bankers Life, supra.* In fact, respondent in entering the order under attack had at least as wide a discretion as this court has in deciding whether the writ should issue. In my opinion, there was no abuse of discretion by respondent, but the issuance of the writ will constitute an abuse of discretion by this court. The shoe is to be placed on the wrong foot."

The judgments of the Court of Appeals directing that the writs of mandamus should issue, should be reversed.

CONCLUSION.

The judgments of the Court of Appeals, that writs of mandamus should issue against petitioner, are erroneous. Petitioner prays that the judgments of the Court of Appeals be reversed, and remanded to the Court of Appeals with directions to dismiss the petitions for mandamus.

Respectfully submitted,

THE HONORABLE WALTER J. LABUY,
UNITED STATES DISTRICT JUDGE,
Petitioner,
by EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
his Attorneys

JOHNSTON, THOMPSON, RAYMOND, MAYER & JENNER,
Chicago 3, Illinois
Of Counsel.

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No. 27

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC. and
MONTGOMERY WARD & CO., INC.,
Respondents.

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC.,
Respondent.

PETITIONER'S REPLY BRIEF.

EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
11 S. La Salle St.,
Chicago 3, Illinois,
Attorneys for Petitioner.

JOHNSTON, THOMPSON, RAYMOND, MAYER & JENNER,
Of Counsel.

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Respondent.

PETITIONER'S REPLY BRIEF.

STATEMENT OF THE CASE.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondents' "Statement of the Case" (Resp. Br. p. 2) does not contradict that of petitioner's. (Pet. Br. pp. 4-14.) The facts and circumstances impelling petitioner to order the references were carefully explained by petitioner to the parties prior to the entry of the orders of reference (R. 6), as is set forth in detail in petitioner's answers to the petitions for mandamus filed in the Court of Appeals

(R. 7-13; 215-18). These reasons were summarized in petitioner's opening brief (Br. pp. 10-13). Respondents in the Court of Appeals did not challenge by responsive pleading any of the allegations of petitioner's answers, and both the majority and dissenting judge of the court below gave full credence to the reasons impelling petitioner to order the references. The issues framed by the pleadings are not, therefore, confined to the formal recitation contained in the referral orders (R. 4, 213-214). Rather, these orders are to be legally measured against the standards contained in Rule 53 (b) of the Federal Rules on the basis of all of the circumstances occasioning the two orders of reference.

ARGUMENT.

I.

The Court of Appeals erred in Ordering the Writs of Mandamus to Issue.

Rule 53 (b) of the Federal Rules vests the trial court with discretionary authority to order a reference in non-jury actions upon a showing that "some exceptional condition requires it". It is conceded that petitioner had jurisdiction and authority over the parties and the subject matter of the cases referred, and it is further conceded that he had, under Rule 53 (b), the power to act. This Court is therefore met at the threshhold of its inquiry with whether the Court of Appeals had authority, under the "All Writs Act" (28 U.S.C. 1651 (a)) in the light of these conceded facts, to issue the writs of mandamus here challenged. For the reasons stated in petitioner's opening brief (Br. pp. 29-37), petitioner contends that the Court of Appeals erred in ordering the writs of mandamus to issue, whether viewed either as a lack of power because not "in aid" of their appellate jurisdiction, or merely as erroneous because writs of mandamus are not to be employed by Courts of Appeal to reverse discretionary and interlocutory orders of district courts.

1. Courts of Appeal, unlike this Court, possess only such powers as are conferred upon them by Congress. See *e.g.*, *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 233-34 (1922). The "All Writs Act" confers upon the Courts of Appeal power to issue extraordinary writs, such as mandamus, only where such issuance is "in aid" of the court's jurisdiction. Since the orders of reference here

involved did not threaten the jurisdiction of the Court of Appeals, the court below lacked statutory power under the "All Writs Act" to issue the writs complained of. Respondents, however, seek to show that prior to the enactment in 1948 of 28 U.S.C. § 1651 (a), the Courts of Appeal possessed a general supervisory power under § 377 equivalent to that of the Supreme Court under § 342. (Resp. Br. p. 4). To support this contention, respondents rely on two sentences from *Ex Parte Peru*, 318 U.S. 578, 582 (1943) and *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 25 (1943). This Court in *Ex Parte Peru* held that a writ of mandamus could issue to a district judge despite the fact that the case was not directly appealable to the Supreme Court. This was followed in *Roche* where this Court stated that Courts of Appeal could issue writs of mandamus although no appeal had as yet been effected, but where the case was within the potential appellate jurisdiction of the Court of Appeals. This Court noted, however, that the issuance of a writ of mandamus in advance of appeal was for the *protection* of the appellate court's appellate jurisdiction, saying: "Otherwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal.". 319 U.S. 21, 25. As can be seen, the sentences quoted from these cases by respondents can hardly mean that Courts of Appeal possess a general supervisory power to issue writs of mandamus. Indeed, this Court has expressly interpreted § 377 as authorizing the issuance of extraordinary writs only where such writs are necessary to prevent the frustration of eventual appellate review. "*McClellan* v. *Carland*, 217 U. S. 268, 280, laid down the general rule applicable both to this court and to the circuit courts of appeals, that the power to issue the writ under R.S. § 716 (§ 377) is not limited to cases where its

issue is required in aid of a jurisdiction already obtained, but that 'where a case is within the appellate jurisdiction of the higher court a writ of mandamus may issue in aid of the appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below.'" *Ex Parte United States*, 287 U.S. 241, 246 (1932).

Respondents attempt to avoid the force of *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231 (CA 1, 1955), a case directly in point, by stating that the First Circuit "did not doubt its power to issue the writ, but merely held there were no 'exceptional circumstances' present . . .". (Resp. Br. p. 3). This statement is made in utter disregard of the decisions relied upon in the *Narragansett* case. 224 F. 2d 231, 232 (1st Cir. 1955). These decisions clearly show that the First Circuit will issue mandamus only where the action of lower court tends to impede or frustrate the Court's eventual jurisdiction. Indeed, when read in context, the holding of the *Narragansett* case is unmistakably clear.

McCullough v. *Cosgrave*, 309 U.S. 634 (1940) also offers no support to respondents. That case in no way involved any issue of the power of Courts of Appeal to entertain and issue writs of mandamus, and was decided prior to the 1948 revision of the Judicial Code at a time when this Court's power to issue mandamus was much broader than that specifically granted to the Courts of Appeal.[1] Furthermore, the Supreme Court in *McCullough* employed mandamus in a traditional manner in a situation where the

[1] Indeed even though 28 U.S.C. §1651(a) is applicable in its terms to both this Court and the Courts of Appeal, as petitioner noted in its opening brief (Br. pp. 30-31), the Supreme Court's power under this section is broader than that conferred on the inferior federal courts. See e.g., Moore's Judicial Code, p. 597 (1949).

District Judges had repudiated their jurisdiction by determining in advance that all patent cases should be referred to masters-in-chancery.

Similarly, *Ex Parte Simons*, 247 U.S. 231 (1918), is inapplicable since the district judge in that case had "repudiated" jurisdiction. No such finding is possible in the instant case where the petitioner, in making the references objected to, carefully exercised the discretion conferred upon him by Rule 53 (b). Cases such as *United States* v. *Smith*, 331 U.S. 469 (1947) relied upon by respondents (Resp. Br. pp. 5-6) likewise fail to sustain their contentions. In the *Smith* case, this Court ordered the Court of Appeals for the Third Circuit to issue a writ of mandamus directed to a district judge who had granted a new trial to a defendant under Rule 30 of The Federal Rules of Criminal Procedure, despite the fact that the time provided for by Rule 30 had expired, and despite the fact that the judgment had already been affirmed on appeal. Thus the new trial ordered by the district judge clearly constituted a usurpation of jurisdiction.

Respondents, recognizing that this Court has clearly stated that it would not allow mandamus to be used so as to subvert the Congressional policy against piecemeal review, e.g., *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379, 383 (1953), attempt to justify the issuance of the writ in the instant case on the ground that a review of the final judgment will not afford an adequate remedy. The fallacy of this argument, however, is easily discernable. Congress has provided the conditions under which decisions of district courts may be reviewed. 28 U.S.C. §§ 1291, 1292. By strictly circumscribing the limits of appellate review, Congress, of course, realized that in many in-

stances delays, hardship and expense would result to the litigants. *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379, 383 (1953); *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 30 (1943). Thus any complaint which can be made as to the present system of statutory review must be remedied by an appeal to Congress, and not through the unauthorized enlargement of the availability of extraordinary writs. Furthermore, respondents' argument ignores the fact that the issuance of mandamus in the instant case has interrupted and prolonged the duration of the litigation, as do all interlocutory appeals.

Respondents similarly seek to distinguish the unmistakable pronouncements of this Court, *Parr* v. *United States*, —— U.S. ——, 76 Sup. Ct. 912 (1956); *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379 (1953); *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21 (1943), by arguing that mandamus was denied in these cases because "the party seeking the writ had a remedy on appeal from a final judgment." (Resp. Br. p. 6) However, as will be noted, the remedies available to the petitioners in those cases were no more adequate than the remedy available to the respondents in the instant case. The action complained of in the *Roche* case was an order striking a plea in abatement to a criminal indictment charging a violation of various sections of the Sherman Act. If the order were erroneous, the petitioner would be caused the expense and trouble of an unnecessary and prolonged trial. Nevertheless, this Court held that the issuance of mandamus by the Court of Appeals for the Ninth Circuit was unauthorized. In *Bankers Life & Casualty Co.*, the question before this Court was whether mandamus was an appropriate remedy to vacate a severance and transfer order entered under 28 U.S.C. § 1406(a). In holding that man-

damus would not issue, this Court cited *Gulf Research & Development Co.* v. *Leahy*, 193 F. 2d 302 (CA 3, 1951), where it was stated (pp. 304-305):

> "The mere fact that the petitioners will be put to the inconvenience and expense of what may prove to be a wholly abortive trial is an argument which might be addressed to Congress in support of legislation authorizing interlocutory appeals but does not constitute ground for invoking mandamus power."

Finally, the *Parr* case involved the question of whether an extraordinary writ would issue to review the dismissal of a criminal indictment over petitioner's objection.[2] Again this Court refused to issue an extraordinary writ even though if the order of dismissal constituted error, the trial on the new indictment would be unauthorized and would cause petitioner undue expense and hardship.

If respondents' contention that mandamus is authorized whenever appeal from a final judgment does not afford an adequate remedy is adopted, the whole system of statutory review of final orders only would be judicially abolished. Thus, mandamus could be used to review a denial of a motion to dismiss, since the order, if wrong, would create the hardship and expense of an unnecessary trial. Many other examples could be enumerated, but the decisions of this Court discussed above suffice to show that hardship and expense do not justify circumvention of Congressional policy against piecemeal appeals by the issuance of mandamus.

---

[2] Petitioner was first indicted in the Corpus Christi Division of the United States District Court for the Southern District of Texas. On petitioner's motion, the case was transferred to the Laredo Division of the Southern District. The government then obtained a new indictment in the Austin Division of the Western District. Petitioner sought review of the dismissal of the first indictment granted by the court in the Corpus Christi division.

2. Aside from the question of whether the "All Writs Act" authorizes Courts of Appeal to review interlocutory orders which do not tend to frustrate eventual appellate jurisdiction, the issuance of mandamus in the instant case was erroneous. Concededly Rule 53(b) granted petitioner the power to act and to determine whether, in his considered judgment and discretion, the two related cases should be referred. And as was emphasized in petitioner's opening brief (Br. pp. 33-37), this Court has consistently held that discretionary interlocutory orders entered by a district court with power to act are not reviewable by a writ of mandamus in advance of appeal from the entry of a final order. This view finds further support in decisions of the Courts of Appeal. See *e.g., Clayton* v. *Warlick*, 232 F. 2d 699, 704, 706 (CA 4, 1956).

Respondents cite a recent and gratuitous comment of the Seventh Circuit in *Krinsley* v. *United Artists Corp.*, 235 F. 2d 253, 257 (CA 7, 1956), that references are "a practice all too common in the Northern District of Illinois." (Resp. Br. p. 7). Such reliance is wholly misplaced, since the uncontradicted facts are simply that petitioner, during the last six years (and exclusive of the referrals in the two related cases at bar) referred but nine cases to a master, four of which were hearings on limited issues (R. 12). Contrasted with the very large number of cases assigned to him (R. 11), it can only be concluded that petitioner's referrals are very much the rare exception. The possibility (even if true) that other judges may be ignoring Rule 53 (b) is insufficient to justify mandamus against petitioner who has always scrupulously complied with the rule.

Finally, respondents advance the argument that this Court should not interfere with the "Court of Appeals' exercise of its sound discretion". (Resp. Br. p. 7.) Appar-

ently, as we understand respondents' contention, it is permissible for the Court of Appeals to interfere with the exercise by petitioner of his sound discretion, but that the Court of Appeals, in so doing, is in some fashion insulated from "interference" with its "sound discretion" in substituting its discretion for that of the trial court's. As Judge Major said in dissent:

> "In my opinion, there was no abuse of discretion by respondent, but the issuance of the writ will constitute an abuse of discretion by this Court. The shoe is to be placed on the wrong foot."

Petitioner entered his order only after a careful determination that "exceptional conditions" required that a reference be made. Rule 53 (b) gave him the power to make this determination. Even assuming for the purpose of this argument that his decision was erroneous, mandamus was not an appropriate remedy to review his decision. As stated by this Court, in *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379, 382 (1953), ". . . jurisdiction need not run the gauntlet of reversible errors."

II.

The References Were Authorized by Rule 53 (b) of the Federal Rules of Civil Procedure.

Respondents first seek to limit the reason for the referrals to "congestion" of the petitioner's trial calendar, and then rely on the *per curiam* decision of this Court in *McCullough* v. *Cosgrave*, 309 U.S. 634 (1940) to establish that "congestion" is not a proper ground for referral under Rule 53 (b). Respondents' argument is unsound both as to the basis on which the order of reference was made, as well as to the holding of the *McCullough* case.

1. As petitioner has heretofore emphasized both in his opening brief (Br. pp. 10-13), as well as in this brief

(Br. pp. 1-2), "congestion" was but one of various considerations impelling him to order the referrals, and concerning which he had fully advised the parties prior to the references. It was thus the sum of the various considerations which in petitioner's best judgment necessitated the references.

2. Moreover, respondents' interpretation of *McCullough* v. *Cosgrave*, 309 U.S. 634 (1940), appears to us to be necessarily erroneous. As petitioner pointed out in his opening brief (Br. pp. 25-26), *McCullough* condemned the "persistent disregard of the Rules of Civil Procedure" in a situation where the judges of the district court there involved had adopted a uniform practice of referring all patent cases to masters-in-chancery. *McCullough* thus struck at a practice which amounted to the abdication of judicial discretion. Such is not the case at bar as is amply demonstrated by only nine referrals by petitioner over six years. Respondents seek to find a "persistent disregard" by petitioner of Rule 53 (b) because he simultaneously referred the two related cases here involved to a master-in-chancery (Resp. Br. p. 10). This action can hardly be characterized as a "persistent disregard" of Rule 53 (b). Respondents' argument is frivolous.

Nor are respondents on sound ground in claiming that "congestion" alone may not on occasion be a proper ground for a referral, for respondents leave completely unanswered the fact that *Los Angeles Brush Mfg. Corp.* v. *James*, 272 U.S. 701 (1927), of necessity must stand for the proposition that a congested docket was sufficient to sustain a reference under Equity Rule 59, the predecessor of Rule 53 (b). In light of this fact, *McCullough* v. *Cosgrave*, 309 U.S. 634 (1940), a *per curiam* opinion relying solely upon *Los Angeles Brush Mfg. Corp.* v. *James*, can-

not be construed, as urged by respondents, to hold that congestion of a court calendar is never an adequate ground for a referral. Indeed, such a holding would have necessitated a reversal of the *Los Angeles Brush Mfg. Corp.* case, rather than reliance upon it.

Other authorities similarly hold that congestion may justify a reference. Petitioner has presented a number of cases in support of this contention (Br. pp. 21-23). To this list may be added *Skinner* v. *Aluminum Co. of America*, 95 F. Supp. 183, 184 (W.D. Pa. 1951); *Apex Electrical Mfg. Co.* v. *Sears, Roebuck & Co.*, 15 Fed. Rules Serv. 53 b. 12, Case No. 3, pp. 885-886 (N.D. Ohio 1951). ("In these exceptional circumstances, it is my considered judgment that one piece of private litigation ought not to be allowed to tie up, for several weeks and perhaps two or three months, the complete and exclusive time and attention of one of the judges of this court.")

Respondents argue that petitioner should have resorted to "procedural" devices to "ascertain the true nature of these cases". (Resp. Br. p. 12). The docket entries, including the large number of contested motions, court rulings, and related matters (R. 29-57; 222-240), most assuredly gave petitioner an intimate knowledge of the "true nature" of the cases without resort to other unnamed "procedural devices", and similarly obviated the need for pretrial conferences.

Respondents did move for summary judgment, which motions were denied. Respondents' statement that "although requested to do so", petitioner did not in his order denying the motions "specify the facts that appear without substantial controversy" is inaccurate and misleading in its implications. (Resp. Br. p. 12). In petitioner's opinion denying the motions for summary judgment (reported

in 20 Fed. Rules Serv. 56 d. 2, Case No. 1, p. 817), petitioner explicitly stated the reasons why the movants were not entitled to a specification of facts.

The arguments of respondents on the complexity of the two related cases which were referred are adequately met in petitioner's opening brief (Br. pp. 5-10), and need not be repeated here. It is sufficient to say that respondents, who characterized the cases at bar as "fantastically complicated" in argument before the petitioner in the trial court, now find the cases somehow transformed into ones of "not unusual complexity". (Resp. Br. p. 12)

The majority of the Court of Appeals thought *McCullough v. Cosgrave*, 309 U.S. 634 (1940), decisive of the referrals challenged by the mandamus petitions. 226 F. 2d 703, 707-709, 712-713.[3] For the reasons set forth in our opening brief (Br. pp. 25-26), and in this reply (Br. pp. 11-12), we respectfully suggest that the majority of the court below misconstrued and misapplied *McCullough*. This wholly misplaced reliance on *McCullough* thus reduces the cases at bar to a situation in which petitioner, after an individual appraisal and balancing of all of the factors surrounding the necessity and propriety of a reference, made his determination in the exercise of the discretionary power conferred upon him by Rule 53 (b) that the two related cases should be referred.

Rule 53 (b), authorizing reference to masters, was surely adopted to permit busy courts, under exceptional conditions, to have the aid of Masters to get their work

[3] Respondents apparently now concede that probably this Court entertained the writ in **McCullough** by reason of the "persistent disregard" by the judges of the district court there involved (Resp. Br. p. 10). Respondents, however, still place major reliance on **McCullough**, asserting that the reason for entertaining the writ was not the ground relied upon by this Court for its issuance.

done. If Masters are to be in effect abolished, it should be done by a formal change in the rule, not by the emasculation of the present rule, which obviously authorizes refences within limits. We respectfully ask this Court to reverse the orders of the Court of Appeals, and to give an authoritative interpretation of Rule 53 (b) for the guidance of the lower courts—a practical construction broad enough to give the trial courts reasonable assistance in getting their work done.

CONCLUSION.

For these reasons, petitioner respectfully submits that the judgments of the Court of Appeals be reversed, and the cases remanded to that court with instructions to dismiss the petitions for mandamus.

Respectfully submitted,

THE HONORABLE WALTER J. LA BUY,
United States District Judge,
Petitioner,

By EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
his Attorneys.

JOHNSTON, THOMPSON, RAYMOND,
MAYER & JENNER,
11 S. LaSalle Street,
Chicago 3, Illinois.
Of Counsel

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IN THE

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HONORABLE WALTER J. LA BUY,
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HOWES LEATHER COMPANY, INC., AND MONTGOMERY WARD & CO., INCORPORATED,
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HONORABLE WALTER J. LA BUY,
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vs.

HOWES LEATHER COMPANY, INC.,
Respondent.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JACK I. LEVY,
For Howes Leather Company, Inc.,
77 West Washington Street,
Chicago 2, Illinois,

CHARLES J. BARNHILL,
DAVID L. DICKSON,
JOHN F. MCCLURE,
For Montgomery Ward & Co., Incorporated,
618 West Chicago Avenue,
Chicago, Illinois.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 622.

HONORABLE WALTER J. LA BUY,
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vs.

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Respondent.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ARGUMENT.

A court has power to issue a writ of mandamus to revoke a reference of a non-jury case made in violation of rule 53(b). *McCullough* v. *Cosgrave*, 309 U. S. 634.

There is no conflict of opinion on this proposition.[1] The First Circuit held simply that "no exceptional circumstances" were present in *Narragansett Pier Amusement Co.* (1st Cir.), 224 F. 2d 231, which would "necessitate or render it appropriate" for that court to exercise the power in that case. That court did not question its power to issue the writ in an appropriate case.

Narragansett Pier Amusement Co. does not conflict with the case at bar. There is no similarity between the factual situations presented by the two cases. In *Narragansett*, eight jury cases were consolidated for trial of charges of fraudulent reporting of film rentals and antitrust violations involving four theaters over periods ranging from six to seventeen years. Understandably and properly, the trial court found that the issues were complicated—the prerequisite for reference of a jury case.[2]

In the case at bar, the Court of Appeals held that the situation presented by *Rohlfing* and *Shaffer* (non-jury cases in which, at the time they were referred, 87 plaintiffs sued 6 defendants in one case and 6 plaintiffs sued 7 defendants in the other) did not amount to a *showing* of an *exceptional* condition which *required* the references. In so holding, the Court of Appeals considered not only the showing stated in the orders of reference, namely:

> "* * * being confronted with an extremely congested calendar, and finding that exceptional conditions exist for this reason * * *"

---

1. Even the dissenting judge conceded that the Court of Appeals had "jurisdiction and power to issue the writ". It is significant that the petitioner did not raise the question of power in the answer and briefs which he filed in the Court of Appeals prior to the publication of the *Narragansett* opinion.

2. The "Brief For Respondents In Opposition" in *Narragansett* observed that even if this Court had taken and reversed that case, "a direction to the First Circuit to accept and formally consider the petition for mandamus" would not have resulted in reversal of the trial court's order of reference since the record there clearly showed that the order "was fully justified."

but also all of the other reasons advanced in support of the references in the briefs filed in the Court of Appeals and now in the petition for certiorari.[3]

Obviously, there is no conflict between this case and *McCullough*. The showing relied on by the trial court as requiring the reference in *McCullough* was even more compelling than the reasons now advanced by the petitioner in the case at bar. 3 Fed. Rules Serv. 496. This Court must have regarded the showing in *McCullough* as inadequate. Otherwise, it would not have revoked the reference. If the showing in that case had satisfied the requirements of rule 53(b), this Court would not have ignored the merits of the case and revoked the reference, simply to chastise the District Court for having announced an unacceptable policy.

Since the showing in *McCullough* was not sufficient, it must follow that the showing in this case did not require the reference. Consistently, mandamus issued in both cases.

The petition for certiorari discusses a number of cases, dealing with various subjects, in an effort to conjure up conflicts which, it is suggested, would be resolved if this Court were to grant the petition. None of those cases involves rule 53(b).

The ruling below did not expound any new legal principles, nor will it have the consequences predicted by the petitioner. References will not cease in the Seventh Circuit, but they will "be the exception and not the rule." *Troyak* v. *Enos* (7th Cir.), 204 F. 2d 536, 544. Every trial judge in the federal system—and particularly in the Seventh Circuit—has had ample notice that rule 53(b) will

3. If a showing of a congested calendar were sufficient to satisfy the rule, then trial courts should be free to refer case after case until the congestion is relieved. No responsible source has ever advocated such a solution. *Report Adopted By Judicial Conference of the United States*, 13 F. R. D. 62; *Report of Committee on Practice and Procedure in the Trial of Antitrust Cases*, Antitrust Section, American Bar Association (1954).

be enforced. *Los Angeles Brush Corp.* v. *James*, 272 U. S. 701; *McCullough* v. *Cosgrave, supra*; *U. S.* v. *Kirkpatrick* (3rd Cir.), 186 F. 2d 393; *In re Irving-Austin Bldg. Corp.* (7th Cir.), 100 F. 2d 574, 577; *Adventures In Good Eating, Inc.* v. *Best Places To Eat, Inc.* (7th Cir.), 131 F. 2d 809, 814.

The Court of Appeals decided that there was no showing in this case of an exceptional condition which required the references—nothing more. The Court of Appeals had and exercised the power to mandamus to correct the violation of rule 53(h), for which there was no redress on appeal.[4]

The petition for certiorari is merely an attempt to have this Court substitute its judgment for that of the Court of Appeals on the question of whether the factual situation in this case warranted action to enforce the rule.

Conclusion.

The petition should be denied.

Respectfully submitted,

JACK I. LEVY,
For Howes Leather Company, Inc.,
77 West Washington Street,
Chicago 2, Illinois,
CHARLES J. BARNHILL,
DAVID L. DICKSON,
JOHN F. McCLUPE,
For Montgomery Ward & Co., Incorporated,
618 West Chicago Avenue,
Chicago, Illinois.

4. As contrasted with the situations presented in *Bankers Life and Casualty Co.* v. *Holland*, 346 U. S. 379 and *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, where appeal was an adequate remedy.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 27

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC., AND MONTGOMERY WARD & CO., INCORPORATED,
Respondents.

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC.,
Respondent.

RESPONDENTS' BRIEF.

JACK I. LEVY,
For Howes Leather Company, Inc.,
77 West Washington Street,
Chicago 2, Illinois,

CHARLES J. BARNHILL,
DAVID L. DICKSON,
JOHN F. MCCLURE,
For Montgomery Ward & Co., Incorporated,
619 West Chicago Avenue,
Chicago, Illinois.

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HONORABLE WALTER J. LA BUY,
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vs.

HOWES LEATHER COMPANY, INC.,
Respondent.

RESPONDENTS' BRIEF.

QUESTIONS PRESENTED FOR REVIEW.

Respondents conceive the questions presented for review to be as follows:

1. Whether the Court of Appeals had power to issue the writ of mandamus to petitioner to compel revocation of orders of reference entered in violation of rule 53(b).

2. Whether this is an appropriate case for the exercise of that power.

3. Whether petitioner's reference of two non-jury cases for the reason that petitioner was "confronted with an extremely congested calendar" and found "that exceptional conditions exist for this reason" violated rule 53(b).

STATEMENT OF THE CASE.

Petitioner on his own motion, over the objection of the parties, referred two separate non-jury cases to a master for trial. The cases were not consolidated for trial. At most, *Rohlfing* and *Shaffer* are "companion" cases. And, this is true only to the extent that they both relate to the shoe finding industry and there are three parties common to both cases.

The orders of reference were substantially identical. The only showing made by the orders of reference was:

> "The Court, being confronted with an extremely congested calendar, and finding that exceptional conditions exist for this reason, * * *."

ARGUMENT.

I.

The Court of Appeals Had Power to Mandamus Petitioner to Revoke References Made in Violation of Rule 53(b).

Petitioner's brief denies that the Court of Appeals had power to mandamus petitioner to revoke the references made in violation of rule 53(b).

However, the power is clearly conferred by the statute, enacted in 1948, which grants to all federal courts alike the power to issue all writs "necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 62 Stats. Part 1, 944, 28 U. S. C. § 1651(a).

Even the dissenting judge below agreed that the Court of Appeals had "jurisdiction and power to issue the writ." (R. 325.)

The First Circuit, in *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231 (CA 1, 1955), did not doubt its power to issue the writ, but merely held there were no "exceptional circumstances" present in that case which would "necessitate or render it appropriate" to exercise the power.

Petitioner's brief asserts that prior to 1948, the pertinent statutes conferred on this Court a power broader than that vested in the courts of appeals with respect to the issuance of mandamus to a district court. (pp. 29-31.) To support this contention, petitioner contrasts the language of former section 342, granting the Supreme Court power to issue writs of mandamus "in cases warranted by

the principles and usages of law", with that of former section 377, granting power to federal courts to issue the writ where it "may be necessary to exercise their respective jurisdictions, and agreeable to the usages and principles of law".

However, this Court has defined its power under section 342 as identical with that of the courts of appeals under section 377 in cases where the writ was directed to a district court. See *Ex parte Republic of Peru*, 318 U. S. 578, 582 (1943), where this Court described its own power as follows: "Hence its statutory authority to issue writs of prohibition or mandamus to district courts can be constitutionally exercised only in so far as such writs are in aid of its appellate jurisdiction." And, see *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, 25 (1943), where this Court described the power of the courts of appeals in the same manner:

> "As the jurisdiction of the circuit court of appeals is exclusively appellate, its authority to issue writs of mandamus is restricted by statute to those cases in which the writ is in aid of that jurisdiction."

Obviously the present statute, 28 U. S. C. § 1651(a), enacted in 1948, did not change the law. It simply codified the language previously used by this Court to define its power and that of the courts of appeals to issue mandamus directed to a district court.

Therefore, the issuance of the writ by this Court in *McCullough* v. *Cosgrave*, 309 U. S. 634 (1940) is compelling authority for the proposition that the Court of Appeals had power to grant mandamus to revoke references made in violation of rule 53(b).

The point is made that the traditional office of mandamus is "to confine an inferior court to a lawful exer-

cise its authority when it is its duty to do so". (Petitioner's brief, p. 34.) But, this Court has pointed to *McCullough* as an instance of that traditional use. *Ex Parte Republic of Peru*, 318 U. S. 578, 583 (1943). Therefore, the Court of Appeals' grant of the writ in the case at bar—where the relief was identical with that in *McCullough*—was necessarily an instance of traditional use of mandamus. Furthermore, the Court of Appeals' direction that the cases referred by petitioner be tried by a judge, rather than a master, is also essentially the same as this Court's mandate to a district court to try at law a count which it had transferred to the equity side, which transfer was characterized by this Court as a repudiation of jurisdiction. *Ex parte Simons*, 247 U. S. 231 (1918).

It is argued that the Court of Appeals has unlawfully reviewed an interlocutory order prior to appeal from a final judgment. (Petitioner's brief, pp. 31, 33.) This assertion ignores the fact that there is no remedy for these unlawful orders of reference on appeal from a final judgment.

For example, in *Adventures In Good Eating* v. *Best Places To Eat*, 131 F. 2d 809 (CA 7, 1942), on appeal from the trial court's final decree, the court affirmed despite its holding that the reference violated the rule. The court did no more than tax the costs of reference to the plaintiff (which won the case) because it had sought the reference over defendant's objection. But in the case at bar, all parties objected to the references. See also: *Prudence-Bonds Corp.* v. *Prudence Realization Corp.*, 174 F. 2d 288 (CA 2, 1949); *Newman & Bisco* v. *Realty Associates Securities Corp.*, 173 F. 2d 609 (CA 2, 1949); and 5 Moore, Federal Practice, 2d ed., 2946-2948 (1951), where the author states that an order of reference made in viola-

as the means of such review. And, there is nothing in *In re Narragansett Pier Amusement Corp.*, 224 F. 2d 231 (CA 1, 1955), to support petitioner's assertion that the First Circuit refused mandamus in that case because "it could review the entire case after final decree." (Petitioner's brief, p. 32.)

In *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21 (1943), *Bankers Life & Casualty Co.* v. *Holland*, 346 U. S. 379 (1953), and *Parr* v. *United States*, ... U. S. ....., 76 Sup. Ct. 912 (1956), this Court was careful to point out that the party seeking the writ had a remedy on appeal from a final judgment. See also: *Ex Parte Fahey*, 332 U. S. 258 (1947), to the same effect and *Roberts* v. *District Court*, 339 U. S. 844 (1950), where another remedy was available.

On the other hand, where the action of the lower court was not reviewable, the writ issued. *McCullough* v. *Cosgrave*, 309 U. S. 634 (1940); *United States* v. *Smith*, 331 U. S. 469 (1947); *Maryland* v. *Soper*, 270 U. S. 9 (1926); *Ex Parte United States*, 287 U. S. 241 (1932); *DeBeers Consolidated Mines* v. *United States*, 325 U. S. 212 (1945).

The fact remains that this Court, with the same statutory power as a court of appeals, has issued mandamus to compel observance of rule 53(b) of the Federal Rules of Civil Procedure and rule 33 of the Federal Rules of Criminal Procedure. *McCullough* v. *Cosgrave*, 309 U. S. 634 (1940); *United States* v. *Smith*, 331 U. S. 469 (1947).

II.

This Was an Appropriate Case for the Court of Appeals to Exercise Its Power to Mandamus.

A review of the circumstances demonstrates that this was an appropriate case for the Court of Appeals in its sound discretion to exercise its power to mandamus.

Here, the Court of Appeals found, not that petitioner had erred, as the Court of Appeals found the district judge had done in *Evaporated Milk Assn.* v. *Roche*, 130 F. 2d 843 (CA 9, 1942), but that petitioner's action constituted an "abuse of discretion". (R. 318.)

The Court of Appeals issued the writ "in aid of" its appellate jurisdiction, just as this court must have done in *McCullough* v. *Cosgrave*, 309 U. S. 634 (1940). In this connection, see *Krinsley* v. *United Artists Corp.*, 225 F. 2d 579 (1955), 235 F. 2d 253 (CA 7, 1956), where a reference made two appeals necessary and where, on the second appeal, the Court of Appeals said (p. 257):

> "Had the trial judge himself heard the evidence and then made the same findings and reached the same conclusions, this case could be disposed of here in a very short opinion."

A circumstance of great importance is the fact that references, rather than being the exception, are "a practice all too common in the Northern District of Illinois", as the Court of Appeals observed in *Krinsley*, 235 F. 2d 253, 257 (CA 7, 1956).

Furthermore, this is a case where there is no remedy by appeal. It is not a case of substituting mandamus for appeal.

This is not the sort of case in which this Court should interfere with the Court of Appeals' exercise of its sound

III:

The References Violated Rule 53(b) of the Federal Rules of Civil Procedure.

Rule 53(b) directs that "reference to a master shall be the exception and not the rule." Petitioner's simultaneous reference of two different cases might, of itself, raise some question of compliance with this basic principle.

In *Los Angeles Brush Mfg. Co.* v. *James*, 272 U. S. 701 (1927), this Court advised the federal judiciary in certain terms that equity rule 59, the forerunner of 53(b), was meant to be observed.

This warning was implemented forcefully with respect to rule 53(b), by this Court's disposition of *McCullough* v. *Cosgrave*, 309 U. S. 634 (1940).

The trial judges in the Seventh Circuit were admonished further by their Court of Appeals to obey the rule. *In re Irving-Austin Bldg. Corp.*, 100 F. 2d 574 (CCA. 7, 1938), and *Adventures In Good Eating* v. *Best Places To Eat*, 131 F. 2d 809 (CCA 7, 1942).

Against this backdrop, petitioner made the two references in issue here.

Rohlfing and *Shaffer* are non-jury cases. Such cases can be referred "only upon a showing that some exceptional condition requires" the reference.

Petitioner referred these cases because he was "confronted with an extremely congested calendar." He found that "exceptional conditions exist for this reason." (R. 4, 213.)

Although there may have been a time when a congested calendar was an exceptional, temporary thing, congestion is probably the most serious problem confronting bench and bar today. Certainly it is not an exceptional condition

so far as petitioner is concerned. He admits that his calendar was congested for several years before he referred *Rohlfing* and *Shaffer*. (R. 12.) Of course, his individual calendar is not the sole criterion. As the respondents requested, the Court of Appeals directed that the cases be tried by the District Court, not necessarily by the petitioner. Petitioner did not show in the order of reference, or in his pleadings, that no other judge was available to try these cases. In fact, the Court of Appeals said that "the possibility and advisability of asking that these cases be reassigned to a different judge for trial might well be explored." (R. 324.)

The responsible recommendations of bench and bar reject references as a cure for congestion. Judicial Conference Report, 13 F. R. D. 62, 83, Report of Committee on Practice and Procedure in the Trial of Antitrust Cases, Antitrust Section, American Bar Association, 1954, p. 12. If one were to adopt the principle that congestion is ground for references, then trial judges would be free to refer case after case until the condition is alleviated.

The authorities hold that congestion is not an exceptional condition which requires a reference. *McCullough* v. *Cosgrave*, 309 U. S. 634 (1940); *United States* v. *Kirkpatrick*, 186 F. 2d 393 (CA 3, 1951); *Hartford-Empire Co.* v. *Shawkee Mfg. Co.*, 5 F. R. D. 46 (W. D. Pa. 1946). See also Barron & Holtzoff, Federal Practice and Procedure, Rules Edition, Vol. 2, Sec. 1163, p. 872.

In *McCullough*, the only case decided by this Court interpreting rule 53(b), the writ issued despite the showing that the calendar was congested and despite the additional showing that the assigned judge was ill, no other judge was available, all parties desired an early trial, the cases had been pending for a long time and the cases were complicated and would require a protracted trial. 3 Fed.

Rules Serv. 496. Thus, the showing in that case was far more compelling than that made by petitioner.

Petitioner attempts to distinguish *McCullough* on the ground that when it was decided, this Court possessed a separate, broader power to issue mandamus to a district court. As demonstrated above (pages 3, 4), this argument is without foundation.

Petitioner would confine the authority of *McCullough* to a situation where the judges of a given district engage in a persistent disregard of the rule. But there is nothing in this Court's opinion in *McCullough* to justify such a limitation. This Court must have been of the opinion that the three cases referred in *McCullough* should not have been referred on the showing made. Otherwise, it would not have revoked the reference. In other words, persistent or not, the reference was a disregard of the rule.

If persistent disregard of the rule is necessary to explain *McCullough*, it can be found in the simultaneous reference of three patent cases, just as it can be found in the case at bar in the simultaneous reference of two different anti-trust cases.

If it can be argued that *McCullough* can be explained only by the fact that the district judges there were, aside from that particular case, persistently disregarding the rule, that element is also present in the case at bar, as is evidenced by the remarks of the Chief Judge in *Krinsley* to the effect that references are "a practice all too common in the Northern District of Illinois." In other words, if the Chief Judge is to be believed, then references are not the exception in that district.

Persistent disregard of the rule is more likely the explanation for this Court's having entertained the original application in *McCullough* than it is the explanation for the decision on the merits of that case. This would be consistent with this Court's reasoning in *Ex parte Republic of Peru*,

318 U. S. 578, 584 (1943); *Los Angeles Brush Mfg. Co. v. James*, 272 U. S. 701, 705 (1927); *Ex parte United States*, 287 U. S. 241, 248-249 (1932), where it was said:

> "The rule deducible from the later decisions, and which we now affirm, is that this Court has full power in its discretion to issue the writ of mandamus to a federal District Court, * * * but that such power will be exercised only where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this court should be taken. In other words, application for the writ ordinarily must be made to the intermediate appellate court, and made to this court as the court of ultimate review only in such exceptional cases."

Petitioner argues that *Rohlfing* and *Shaffer* are very complex cases. However, although the rule provides for reference of jury cases where the issues are complicated, it makes no reference to complexity as a basis for reference of a non-jury case. We do not assume that petitioner means that because the cases are complex, a master is better qualified to try them. Apparently, petitioner is simply saying that if he tries these cases in their proper turn, those which follow on his trial call will proceed at a later date. However, when a case comes on for trial in due course, the litigants have a right to expect that their case will be tried by the court within a reasonable time. They have awaited their turn and the mere fact that there may be many cases to follow, is no reason to refer their case to a master.

Petitioner points out that there will be considerable post-trial work; but, of course, that work will have to be done even if the cases are tried by a master and, in all probability, petitioner will be better able to perform that task if he tries the cases himself and becomes familiar with them first hand.

Petitioner's portrayal of the *Rohlfing* and *Shaffer* cases is based principally on the *ex parte* allegations of the unverified complaints,—a wholly unreliable criterion of the true nature of the cases. Judicial Conference Report, 13 F. R. D. 62, 66. He concedes that "many of the claims will be either wholly unsupported by evidence, or on the other hand conceded." (Petitioner's brief p. 27.) He refers to the volume of pre-trial discovery which is certainly not a reliable indication of what evidence will be offered at the trial, since rule 26(b) expressly permits discovery of matter conceded to be inadmissible. Finally, he refers to a brief submitted several years ago in one of the referred cases (*Rohlfing*), dealing with the original complaint, when there were five times as many defendants in that case as there are now.

The fact is that petitioner did not resort to any of the available, recommended procedural devices to ascertain the true nature of these cases and to simplify them if circumstances warranted. Judicial Conference Report, 13 F. R. D. 62. He did not conduct a pre-trial conference in either case. He did not order a separate trial of separable issues, such as conspiracy. When he denied motions for partial summary judgment, he did not make an order "specifying the facts that appear without substantial controversy," although requested to do so. Rule 56(d).

Petitioner could have learned that the passage of time has served to eliminate any unusual complexity there may have been in these cases and that today they are fairly representative of the numerous private antitrust actions pending in the federal courts.

In *Rohlfing* there are now five defendants. Two of these are leather manufacturers. One is a finder or wholesaler who went out of business in September 1950. One is a retail mail order house and the remaining defendant is a retail department store chain.

The case is pending on the second amended complaint, which charges price discrimination and conspiracy to restrain and monopolize. It does not charge violation of Section 3 of Robinson-Patman. (R. 59.)

Petitioner argues that the price discrimination charges will require the hearing of 558 separate controversies. (Petitioner's Brief, p. 9.) However, the two manufacturer-defendants in *Rohlfing* did not sell to any of the plaintiffs, as was noted by petitioner in his memorandum of January 29, 1954, denying their motions for partial summary judgment, when he said, "* * * it appears that none of the moving defendant-manufacturers sold any shoe supplies to any of the plaintiffs". The two defendant retailers are alleged to be preferred buyers, not sellers. The remaining defendant who went out of business in September 1950, answered that he sold to only two plaintiffs. (R. 131.)

Shaffer was always a much simpler case than *Rohlfing*. Here again, the six remaining plaintiffs, all wholesalers, charge price discrimination and conspiracy, but not violation of Section 3 of Robinson-Patman. (R. 241.)

The thirty-two defendants have dwindled to five. Two of these are leather manufacturers. One manufactures shoe polish. One is a shoe repair shop chain and the other is a wholesaler who went out of business in September 1950. (R. 131.)

In connection with the price discrimination aspects of the case, it should be noted that the original complaint, which was verified, alleged the dollar purchases by each plaintiff from the various defendants during the period 1945-1949. From these tables, it appears that during the actionable period one defendant-manufacturer sold five of the present plaintiffs, while the other two defendant-manufacturers sold only one each. Of course, the repair chain and the wholesaler-defendant made no sales to any of the plaintiff wholesalers.

In re Narragansett Pier Amusement Corp., 224 F. 2d 231 (CA 1, 1955), is not, in fact, in conflict with the ruling of the Court of Appeals in this case. There the trial judge had referred eight jury cases which had been consolidated for trial. Those cases involved charges of fraudulent reporting of film rentals and counter-charges of antitrust violations concerning four theatres and covering periods ranging up to 17 years. Understandably, the trial court found in his order of reference that the issues were complicated,—the prerequisite for reference of jury cases.

Petitioner cites, at pages 22 and 23 of his brief, a number of cases decided prior to 1932, in support of his argument that congestion of the trial calendar is an exceptional condition requiring a reference. These cases do not establish that congestion is an exceptional condition in the Northern District of Illinois today.

In *Berlin* v. *Evans*, 300 Fed. 677 (D. C. E. D. Pa., 1924); *Holt Mfg. Co.* v. *C. L. Best Gas Turbine Co.*, 245 Fed. 354 (D. C. N. D. Calif., 1917); *Flanders* v. *Coleman*, 249 Fed. 757 (D. C. S. D. Ga., 1918); *Bliss* v. *Anaconda Copper Mining Co.*, 167 Fed. 342 (C. C. D. Mont., 1909); and *Ramsay* v. *Home Mortgage Co.*, 47 F. 2d 621 (D. C. E. D. N. C., 1931), district judges passed upon the propriety of their own references. In *Berlin* the master's report was attacked on the ground the reference was improper. In *Flanders* and *Ramsey* the parties waived their objections to the references. *Bliss* was decided even before equity rule 59 was adopted.

Smith v. *Brown*, 3 F. 2d 926 (CCA 5, 1925), was pure dictum since the parties had not preserved the point in the trial court. *The P. R. R. No. 35*, 48 F. 2d 122 (CCA 2, 1931), concerned Admiralty Rules 43 and 46, and as stated in *United States* v. *Kirkpatrick*, 186 F. 2d 393, 396 (CA 3, 1951), "* * * the adoption by the Supreme Court of

Admiralty Rule 43½ on May 31, 1932, 286 U. S. 572, a little more than a year after the decision in *The P. R., R. No. 35,* eliminated the basis for the decision in that case and * * * it is, therefore, no longer authority for the practice which it approved.''.

Petitioner cites only two cases in support of the references which were decided after this Court's mandate in *McCullough* v. *Cosgrave,* 309 U. S. 634 (1940). Neither of those cases involved references based on congestion of the trial calendar. *Helene Curtis* v. *Sales Affiliates,* 105 F. Supp. 886 (S. D. N. Y., 1952), held that a reference was required because an entire industry was disrupted and postponement of trial would seriously aggravate business losses or infringement damages. *Troyak* v. *Enos,* 204 F. 2d 536 (CA 7, 1953), the other post-*McCullough* case cited by petitioner, presented an exceptional condition in that the trial judge had retired and was sitting by assignment until a successor could be appointed. In addition, the case required that hearings be held at various places throughout the United States.

Petitioner's brief argues that the Court of Appeals has virtually nullified references. This ascribes too much to the Court's holding. References are proper in jury actions when the issues are complicated and in non-jury cases on matters of account or when there is an exceptional condition which requires a reference, such as existed, for example, in *Helene Curtis* and *Troyak.* Of course, many cases are referred by agreement of, or without objection from the parties. All the Court of Appeals has done is require petitioner to conform to the requirements of the rule.

CONCLUSION.

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

JACK I. LEVY,
For Howes Leather Company, Inc.,
77 West Washington Street,
Chicago 2, Illinois,

CHARLES J. BARNHILL,
DAVID L. DICKSON,
JOHN F. MCCLURE,
For Montgomery Ward & Co., Incorporated,
619 West Chicago Avenue,
Chicago, Illinois.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 27

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC., and
MONTGOMERY WARD & CO., INC.,
Respondents.

HONORABLE WALTER J. LA BUY,
Petitioner,

vs.

HOWES LEATHER COMPANY, INC.,
Respondent.

PETITION FOR REHEARING.

EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
Attorneys for Petitioner.

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PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner respectfully requests a rehearing in the above entitled proceeding, and in support thereof shows as follows:

The majority opinion opens wide the door to litigants desiring review of interlocutory orders; and clearly permits, if not actually invites, scrutiny and expungement by mandamus of every interlocutory order of a District Court

which the Court of Appeals may feel is in violation of the "rules" and an abuse of discretion. Such review will furthermore be possible in every case where the final decree, when entered, will eventually be subject to review by the Court of Appeals. The majority rejected the view, announced in many previous cases, that such review of an interlocutory order is permissible only when review by appeal would *otherwise be frustrated,* and said instead: "Since the court of appeals could *at some stage of the anti-trust proceedings entertain an appeal* in these cases, it has power in the proper circumstances as here to issue writs of mandamus reaching them." (Emphasis supplied) (Majority Opinion, pp. 5-6). This is very broad language.

Since most procedural matters are now governed by the rules, and since the final judgment or decree in nearly every District Court case is eventually reviewable by the Court of Appeals, the majority opinion encourages the filing of petitions for mandamus to review interlocutory orders involving application of "rules" in all kinds of cases,—criminal as well as civil, since criminal as well as civil procedure is now governed almost wholly by "rules."

In bidding the Courts of Appeal to embark on this course of interlocutory review, this Court appears to be usurping powers expressly reserved to the Congress by the Constitution.

The powers of the Circuit Courts of Appeal derive solely from statute; and the appellate powers of even this Supreme Court are "* * * with such exceptions, and subject to such Regulations as the Congress shall make." Art. III, Section 2, United States Constitution.

Congress has enacted statutes providing that Courts of Appeal shall review only final orders (except for a very

few enumerated interlocutory orders which do not embrace the order here reviewed). 28 U.S.C. 1291, 1292. By these statutes a very sensible policy is established, and a regulation is laid down, which policy and regulation this Court is, according to the Constitution, bound to follow. Yet the majority opinion does not do so, but instead sets it aside and permits review of a host of interlocutory orders by mandamus. Historically, review of such interlocutory orders by mandamus has been to confine the lower court to its jurisdiction, or to prevent the lower court from frustrating review, as by refusing to sign a bill of exceptions, or some such act. See *Ex Parte Peru*, 318 U.S. 578, 63 Sup. Ct. 793, where this Court said that mandamus could be constitutionally issued "* * * only insofar as such writs are in aid of its appellate jurisdiction;" and *McClellan* v. *Carland*, 217 U.S. 268, 30 Sup. Ct. 501, where this Court said: "But we think it the true rule that where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of the appellate jurisdiction *which might otherwise be defeated by the unauthorized action of the court below*" (Emphasis ours); and *Ex Parte United States*, 287 U.S. 241, 53 Sup. Ct. 129, where this Court said that since *Marbury* v. *Madison*, to authorize mandamus, "* * * it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable the court to exercise its appellate jurisdiction." Mandamus has been used in criminal cases, where an acquittal would preclude any review; to order the certification of a record to permit review; to order the entry of a final decree to permit review, and the like. This Court said in *Maryland* v. *Soper*, 270 U.S. 9, 29, 46 Sup. Ct. 185, "Mandamus * * * does not lie to compel a reversal of a decision, either interlocutory or final, made in the exercise of a lawful jurisdiction, especially

where in regular course the decision may be reviewed upon writ of error or appeal."

This is what Congress necessarily had in mind in authorizing the Courts, by the All-Writs Act, to issue mandamus and other writs: "* * * in aid of their respective jurisdictions." The courts were to issue the writs only if necessary to insure a review,—to aid or assist in securing review,—but never to control a trial judge's discretion.

In *Life and Fire Insurance Co. of New York* v. *Heirs of Wilson*, 8 L. Ed. 949 (1934), this Court held: "On a mandamus a superior court will never direct in what manner the discretion of an inferior court will be exercised; but they will, in a proper case, require an inferior court to decide." This principle is abandoned by the majority opinion in the present case.

The majority opinion further states that the writ of mandamus may not only be withheld if the court, in its discretion, decides to withold it, but that it also may be *granted* in any case at the court's discretion. Previously this Court held that, like certain equitable remedies, mandamus might at the court's discretion be withheld even where a legal showing was made for it. See *U. S.* v. *Dern* (1933) 289 U.S. 352, 53 Sup. Ct. 614, where this Court said of mandamus: "* * * its allowance is controlled by equitable principles * * * and it may be refused for reasons which would lead a court of equity, in the exercise of a sound discretion, to withhold its protection of an undoubted legal right." While the court may have the right to withhold the writ in its discretion, and has frequently so stated, it may not issue the writ unless authorized by the Constitution or by statute to do so.

Whether review should be immediate or await final decree is an important policy matter. Interlocutory re-

view, while sometimes avoiding a retrial, is nevertheless disruptive and conducive to gross delays. It is akin to "back seat driving," and can prove equally upsetting. The Congressional policy of deferring review until final decree is a thoroughly considered and wise policy, and should not be overthrown by this Court, even if this Court had the power so to do. But, under the Constitution, this Court does not have that power, and this Court should not assume it by sheer assertion.

If the majority opinion stands, the Courts of Appeal may well be deluged with petitions for mandamus seeking the expungement of distasteful interlocutory orders, relating to venue, discovery, depositions, change of forum, evidence, severance, references, pleadings, amendments, intervention, granting of new trials, and a myriad of other contested questions presently governed by the civil or criminal rules.

We search the statutes in vain to find where Congress has conferred on the Courts of Appeal "supervisory control of the District Courts," as is asserted by the last paragraph of the majority opinion. From what statute does such power derive? This Court cites none. The only statute we can discover which might have any bearing is Title 28, Section 332 of the United States Code, which creates a Judicial Council consisting of the chief judge and circuit judges of each circuit, and provides that the council shall meet as such twice a year, and "shall make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit."

The orders of the Judicial Council are limited to those relating to "administration of the business" of the courts; this statute cannot possibly authorize review of

any "judicial" act of any judge. This statute certainly does not confer on the Court of Appeals the right to set aside interlocutory orders of the District Courts by mandamus. Whether or not "supervisory control over the District Courts," is either desirable or "necessary to proper judicial administration in the federal system," it can exist in the Courts of Appeal only to the extent that Congress has provided by statute.

We further urge the court to reconsider its harsh judgment that petitioner, Judge La Buy, "abused his discretion" in making a general reference of these fantastically complicated cases. This case, by its very nature involving as it does 87 plaintiffs and 6 defendants, and comparable charges of price discrimination, requires the trier of the facts to make an account of hundreds of sales transactions before the question of liability can be resolved. Therefore, it appeared to the respondent that the case came within the scope of Rule 53(b) because it involved accounting. Perhaps this Court would have decided the matter differently, but the matter fairly lay within the trial judge's discretion, and his exercise of that discretion should not have been arbitrarily overruled. If this was an "abuse of discretion" then respondent really had no discretion and the term becomes meaningless.

Rule 53(b) is completely emasculated by the Court's opinion; the court gives no light on its meaning. Are there any "exceptional conditions" which will justify a general reference? If any exist, they are not even vaguely delineated. (See Petitioner's brief, pp. 17-18).

This rspondent respectfully urges this Honorable Court to interpret and define Rule 53(b) for his future guidance as well as that of all other judges of the United States District Courts.

For the foregoing reasons, petitioner respectfully requests a rehearing.

Respectfully submitted,

EDWARD R. JOHNSTON,
JAMES A. SPROWL,
EDWARD H. HATTON,
Attorneys for petitioner.

CERTIFICATE OF COUNSEL.

JAMES A. SPROWL, one of the attorneys for petitioner in the above entitled cause, does hereby certify that the foregoing annexed Petition for Rehearing is filed in good faith and not for purposes of delay.

JAMES A. SPROWL